

SCHEDULE 2

THE CONSTITUTION OF PITCAIRN

PART 6

THE ADMINISTRATION OF JUSTICE

Application of English law

42.—(1) Subject to subsection (2), the common law, the rules of equity and the statutes of general application as in force in and for England for the time being shall be in force in Pitcairn.

(2) All the laws of England extended to Pitcairn by subsection (1) shall be in force in Pitcairn so far only as the local circumstances and the limits of local jurisdiction permit and subject to any existing or future Ordinance, and for the purpose of facilitating the application of the said laws it shall be lawful to construe them with such formal alterations not affecting the substance as to names, localities, courts, offices, persons, moneys, penalties and otherwise as may be necessary to render those laws applicable to the circumstances.

The courts of Pitcairn

43.—(1) The courts of Pitcairn shall be the Pitcairn Supreme Court, the Pitcairn Court of Appeal, and such courts subordinate to the Supreme Court as may be established by law.

(2) The Pitcairn (Appeals to Privy Council) Order 2000⁽¹⁾ (as amended by this Order) shall continue to apply in relation to appeals to Her Majesty in Council from judgments of the Court of Appeal.

(3) Without prejudice to the generality of the power conferred by section 36(1), the Governor may by any law constitute courts for Pitcairn with such jurisdiction, and make such provisions and regulations for the proceedings in such courts and for the administration of justice, as the Governor may think fit.

(4) Subject to any law, a court established under subsection (3) shall sit in such place in Pitcairn as the Governor, acting in accordance with the advice of the Chief Justice, may appoint; but it may also sit in the United Kingdom, or in such other place as the Governor, acting in accordance with the advice of the Chief Justice, may appoint.

(5) Where a court sits, by virtue of subsection (4), in some place other than Pitcairn, it may there exercise its jurisdiction and powers in like manner as if it were sitting within Pitcairn, but anything done there by virtue of this subsection shall have, and shall have only, the same validity and effect as if done in Pitcairn.

(6) The references in subsections (4) and (5) to a court sitting and exercising its jurisdiction and powers in any place include references to a judge or judicial officer or officer of the court exercising in that place any jurisdiction or powers or other functions vested in him or her as such by any law.

Independence of the judiciary

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

(1) [S.I. 2000/1816](#), amended by [SI 2009/224](#).

SUPREME COURT

Constitution of Supreme Court

45.—(1) There shall be a Supreme Court for Pitcairn which shall be a superior court of record and shall be styled the Pitcairn Supreme Court.

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

(3) Without prejudice to the generality of subsection (2), the Supreme Court shall possess and may exercise in and in relation to Pitcairn, 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 the style of the Court and a device approved by the Chief Justice.

Sittings of Supreme Court

46.—(1) The Supreme Court may sit in Pitcairn or, in such circumstances as may be prescribed by Ordinance, outside Pitcairn.

(2) The Chief Justice when outside Pitcairn 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

47.—(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.

(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.

(3) If—

- (a) in the circumstances described in subsection (2), there is no judge who can perform the functions of the office of 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 may decide that an acting judge should be appointed to hold the Supreme Court.

(4) A person shall not be qualified for appointment as the Chief Justice or any other judge or acting judge of the Supreme Court unless—

- (a) he or she 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 Ireland, or a court having jurisdiction in appeals from any such court; or
- (b) he or she is entitled to practise as an advocate in such a court and has been entitled for not less than seven years to practise as an advocate or solicitor in such a court.

(5) For the purposes of subsection (4), a person shall be regarded as an advocate or a solicitor if he or she 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 or she holds or acts in any office the holder of which is, by reason of his or her office, precluded from practising in a court; or
- (b) he or she does not hold a practising certificate or has not satisfied any other like condition of being permitted to practise.

Exercise of jurisdiction of Supreme Court

48.—(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

49.—(1) There shall be a Court of Appeal for Pitcairn which shall be a superior court of record and shall be styled the Pitcairn Court of Appeal.

(2) The judges of the Court of Appeal shall be—

- (a) a President and two or more Justices of Appeal; and
- (b) the Chief Justice, who shall be a member of the Court *ex officio*.

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

- (a) he or she 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 Ireland, or a court having jurisdiction in appeals from any such court; or
- (b) he or she is entitled to practise as an advocate in such a court and has been entitled for not less than seven years to practise as an advocate or solicitor in such a court.

(4) For the purposes of subsection (3), a person shall be regarded as an advocate or a solicitor if he or she 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 or she holds or acts in any office the holder of which is, by reason of his or her office, precluded from practising in a court; or
- (b) he or she does not hold a practising certificate or has not satisfied any other like condition of being permitted to practise.

(5) At any time when the office of President of the Court of Appeal 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 designated for that purpose by the Governor or, in the absence of such designation, by the Justice of Appeal who is the senior Justice of Appeal in terms of date of appointment.

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

Jurisdiction of Court of Appeal

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

(2) In connection with any appeal from a court of Pitcairn, 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 Pitcairn shall, subject as aforesaid, be enforced in Pitcairn 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 of the Court, sit in Pitcairn or elsewhere for the purpose of exercising any jurisdiction and powers conferred on it by or under this Constitution or by any rule made under section 51; but anything done elsewhere than in Pitcairn by virtue of this subsection shall have, and have only, the same validity and effect as if done in Pitcairn.

Practice and procedure on appeals

51.—(1) Subject to 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 Pitcairn and, in connection with such appeals, for regulating the practice and procedure in any court of Pitcairn from which such appeals are brought.

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

- (a) for regulating the sittings of the Court of Appeal, whether in divisions or otherwise, and the selection of judges for any purpose;
- (b) for regulating the right of practising before the Court of Appeal and the representation of persons concerned in any proceedings in the Court;
- (c) for prescribing cases in which, and conditions on which, an appellant in a criminal appeal to the Court of Appeal shall be entitled to be present at the hearing of the appeal;
- (d) for providing for the summary determination of any appeal which appears to the Court of Appeal to be frivolous or vexatious or to be brought for the purposes of delay;
- (e) for prescribing the forms and fees in respect of proceedings in the Court of Appeal 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 of Appeal;
- (g) for prescribing the time within which any requirement of the rules is to be complied with;
- (h) for providing for a reference to the Court of Appeal from a decision of a single judge.

(3) Rules made under this section may fix the number of judges of the Court of Appeal who may sit for any purpose; but—

- (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.

GENERAL

Appointment of judges and judicial officers

52.—(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 advice of the Chief Justice, shall appoint any acting judge of the Supreme Court.

(3) The Governor shall appoint any judicial officers.

(4) Every person appointed under this section shall, subject to this Constitution, hold office on such terms and conditions as the Governor may prescribe.

(5) Before entering upon the functions 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.

Remuneration

53.—(1) There shall be paid to every judge or judicial officer such remuneration as may be agreed between the Governor and the judge or judicial officer immediately before his or her appointment, and such remuneration shall be charged on the public funds of Pitcairn.

(2) The remuneration and allowances and other terms and conditions of a judge or a judicial officer shall not be altered to the disadvantage of the judge or judicial officer during his or her continuance in office.

Tenure of office of judges

54.—(1) Subject to the following provisions of this section, the Chief Justice, any other judge of the Supreme Court, the President of the Court of Appeal and any Justice of Appeal shall hold office until he or she attains the age of 75 years; but the Governor may permit any such person who has attained the age of 75 years to remain in office for such fixed period, not exceeding two years, as may have been agreed between that person and the Governor.

(2) 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.

(3) A judge 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.

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

(5) Nothing done by a judge shall be invalid by reason only that the judge has attained the age at which he or she is required by or under this section to retire from office.

(6) The office of a judge shall not be abolished during the continuance in office of the judge without his or her consent.

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(7) A judge may be removed from office only for inability to discharge the functions of his or her office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be removed except in accordance with subsection (8).

(8) A judge shall be removed from office by the Governor by instrument stamped with the Official Stamp if the question of the removal of that judge from office has, at the request of the Governor made in pursuance of subsection (9), been referred by Her Majesty to the Judicial Committee of Her Majesty's Privy Council under section 4 of the Judicial Committee Act 1833⁽²⁾ 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 for inability as aforesaid or for misbehaviour.

(9) If the Governor considers that the question of removing a judge from office for inability as aforesaid or for misbehaviour ought to be investigated, then—

- (a) the Governor shall appoint a tribunal, which shall consist of a convenor and two other members, selected by the Governor from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in one or more Commonwealth countries or in Ireland or a court having jurisdiction in appeals from any such court;
- (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.

(10) The Commissions of Inquiry Ordinance shall apply *mutatis mutandis* in relation to a tribunal appointed under subsection (9) and the expenses of any such inquiry shall be charged on the public funds of Pitcairn.

(11) If the question of removing a judge from office has been referred to a tribunal under subsection (9), the Governor may suspend the judge from performing the functions of that office, and any such suspension may at any time be revoked by the Governor 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.

Tenure of office of judicial officers

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

(2) A 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.

(3) A judicial officer may at any time resign from office by writing under his or her hand addressed to the Governor.

(4) A judicial officer may be removed from office only for inability to discharge the functions of his or her office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be removed except in accordance with subsection (5).

(2) 1833 c. 41.

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(5) The Governor may remove a judicial officer from office if the Governor, after such enquiries as he or she considers appropriate, determines that the judicial officer concerned should be removed from office for inability as aforesaid or for misbehaviour.

(6) A person who has been removed from office as a judicial officer by the Governor may apply to the Supreme Court for redress on the ground that any finding of fact or law on which the Governor based his or her decision 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.