STATUTORY INSTRUMENTS

# 1966 No. 1458

# SOUTH ATLANTIC TERRITORIES
# The St. Helena (Constitution) Order 1966

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| *Made* - - - - | *22nd November* 1966 |
| *Laid before Parliament* | *28th November* 1966 |
| *Coming into Operation* | *On a day to be appointed under s.* 1(2). |

At the Court at Buckingham Palace, the 22nd day of November 1966

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers in that behalf conferred by section 112 of the Government of India Act 1833(a), the British Settlements Acts 1887(b) and 1945(c) or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Citation and commencement.

**1.**—(1) This Order may be cited as the St. Helena (Constitution) Order 1966.

(2) This Order shall come into operation on such day as the Governor may by proclamation published in the Gazette appoint (hereinafter referred to as "the appointed day") which day shall not be earlier than 29th November 1966.

Interpretation.

**2.**—(1) In this Order—

"the Advisory Council" means the Advisory Council established by the existing Order;

"the existing Order" means the St. Helena Order in Council 1956(d);

"the Constitution" means the Constitution set out in schedule 1 to this Order.

(2) Unless the context otherwise requires, expressions used in sections 1 to 9 (inclusive) of this Order and in schedule 2 thereto have the same meaning as in the Constitution and the provisions of section 49 of the Constitution shall apply for the purposes of interpreting those sections and that schedule as they apply for interpreting the Constitution.

Revocation.

**3.** The existing Order is revoked with effect from the commencement of this Order.

Establishment of Constitution.

**4.** Subject to the provisions of section 8 of this Order the Constitution shall come into effect in St. Helena and its Dependencies on the appointed day.

Existing laws.

**5.**—(1) Subject to the provisions of this section, the existing laws shall, notwithstanding the revocation of the existing Order, have effect from the appointed day as if they had been made in pursuance of this Order and shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Order.

(a) 1833 c. 85. (b) 1887 c. 54. (c) 9 & 10 Geo. 6. c. 7. (d) S.I. 1956/414 (1956 II, p. 2186).

(2) The Governor may by order made at any time within twelve months after the appointed day make such amendments to any existing law as may appear to him to be necessary or expedient for bringing that law into conformity with the provisions of this Order or otherwise for giving effect or enabling effect to be given to those provisions.

(3) The provisions of this section shall be without prejudice to any powers conferred by this Order upon any person or authority to make provision for any matter, including the amendment or repeal of any existing law.

(4) For the purposes of this section, the expression "existing laws" means all Ordinances, rules, regulations, orders and other instruments made in pursuance of, or kept in force by, the existing Order, and having effect as part of the law of St. Helena or its Dependencies immediately before the appointed day.

Existing Offices.

**6.** Subject to the provisions of section 7 of this Order, where any office has been established by or under the existing Order and any provision of the Constitution establishes a similar or an equivalent office (not being the office of member of the Executive Council) any person who, immediately before the commencement of that provision, holds or is acting in the former office shall, so far as is consistent with the provisions of the Constitution, be deemed to have been appointed, as from the commencement of that provision, to hold or to act in the latter office in accordance with the provisions of the Constitution and to have taken any necessary oath under the Constitution:

Provided that any person who under or by virtue of the provisions of the existing Order would have been required to vacate his office at the expiration of any period shall vacate his office at the expiration of that period.

Members of and dissolution of Legislative Council.

**7.**—(1) Any person who immediately before the appointed day is an Official Member or an Unofficial Member of the Advisory Council shall, with effect from the appointed day, be deemed to have been appointed under schedule 2 to this Order as an Official Member or an Unofficial Member, as the case may be, of the Legislative Council established by the said schedule, and the provisions of the said schedule shall apply to him accordingly.

(2) Any person who immediately before the appointed day is an Elected Member of the Advisory Council shall, with effect from the appointed day, be deemed to be an Elected Member of the Legislative Council established by schedule 2 to this Order and to have been returned thereto in accordance with the provisions of that schedule by the electoral division by which he was returned to the Advisory Council.

(3) Without prejudice to the provisions of section 41 of the Constitution the Governor shall dissolve the Legislative Council established by schedule 2 to this Order at the expiration of one year from the date of the commencement of this Order.

Transitional.

**8.** Until the date of the first dissolution of the Legislative Council after the commencement of this Order the provisions of the Constitution set out in sections 14 to 19 (inclusive) thereof shall not have effect and the provisions set out in schedule 2 to this Order shall have effect in lieu thereof.

**9.** There is reserved to Her Majesty full power to make laws from time to time for the peace, order and good government of St. Helena and its Dependencies, including, without prejudice to the generality of the foregoing, laws amending or revoking this Order. Power reserved to Her Majesty.

*W. G. Agnew.*

## SCHEDULE 1 TO THE ORDER

Section 2(1).

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## PART I

### THE GOVERNOR

Office of Governor constituted.

**1.**—(1) There shall be a Governor and Commander-in-Chief of St. Helena and its Dependencies.

(2) Appointments to the office of Governor shall be made by Commission under Her Majesty's Sign Manual and Signet and a person appointed to the office shall hold the office during Her Majesty's pleasure.

(3) A person appointed to the office of Governor shall, before entering upon the duties of that office, make oaths of allegiance and for the due execution of the office of Governor in the form set out in the schedule to this Constitution.

(4) The Governor shall have such powers and duties as are conferred upon him by or under this Constitution or any other law and such other powers and duties as Her Majesty may from time to time be pleased to assign to him and, subject to the provisions of this Constitution and of any other law by which such powers and duties are conferred, shall do or execute all things that belong to the office of Governor according to such instructions as Her Majesty may from time to time see fit to give him :

Provided that whether or not the Governor has in any matter complied with such instructions shall not be enquired into in any Court.

Succession to Government.

**2.**—(1) Whenever the office of Governor is vacant or the person holding the office of Governor is absent from St. Helena or is from any other cause prevented from or incapable of discharging the functions of his office those functions shall, during Her Majesty's pleasure, be assumed and performed by such person as Her Majesty may designate by Instructions given under Her Sign Manual and Signet or through a Secretary of State.

(2) Before assuming the administration of the government any such person as aforesaid shall make the oaths directed by subsection (3) of section 1 of this Constitution to be made by a person appointed to the office of Governor.

(3) Any such person as aforesaid shall not continue to administer the government of St. Helena and its Dependencies after the person holding the office of Governor or some other person having a prior right to administer the government has notified him that he is about to assume, or resume, the administration.

(4) For the purposes of this section a person holding the office of Governor shall not be regarded as absent from St. Helena, or as prevented from or incapable of discharging the functions of the office of Governor, at any time when there is a subsisting appointment of a Deputy under section 3 of this Constitution.

Deputy to Governor.

**3.**—(1) Whenever the Governor—

(*a*) has occasion to be absent from the seat of government for a period that he has reason to believe will be of short duration ;

(*b*) has occasion to visit any Dependency of St. Helena ; or

(*c*) is suffering from an illness that he has reason to believe will be of short duration,

he may, by Instrument under the public seal, appoint any person in St. Helena to be his Deputy during such absence or illness and in that capacity to discharge on his behalf during such absence or illness such of the functions of the office of Governor as may be specified in that Instrument.

(2) The power and authority of the Governor shall not be abridged, altered or in any way affected by the appointment of a Deputy under this section otherwise than as Her Majesty may at any time think proper to direct by instructions to the Governor through a Secretary of State and every such Deputy shall conform to and observe all instructions that the Governor may from time to time address to him for his guidance.

(3) A person appointed as Deputy under this section shall hold that appointment for such period as may be specified in the Instrument by which he is appointed and his appointment may be revoked at any time by Her Majesty by instructions given to the Governor through a Secretary of State or by the Governor.

(4) For the purposes of this section "the Governor" means the person for the time being holding the office of Governor and includes any person for the time being administering the government of St. Helena and its Dependencies.

## PART II

### EXECUTIVE COUNCIL

Executive Council.

**4.**—(1) There shall be an Executive Council for St. Helena which shall consist of—

(*a*) two *Ex-officio* Members, that is to say, the persons for the time being discharging the functions of—

(i) the Government Secretary of St. Helena; and

(ii) the Treasurer of St. Helena;

(*b*) the persons who, not being *Ex-officio* Members of the Legislative Council, are for the time being the Chairmen of the Council Committees constituted under section 21 of this Constitution (hereinafter in this Part called "the Unofficial Members") and

(*c*) such Temporary Members as may be appointed under subsection (2) of this section.

(2)—(*a*) If a member of the Executive Council is incapable of taking part in the proceedings of the Council by reason of a declaration made under paragraph (*b*) of this subsection the Governor may, by Instrument under the public seal, appoint a person to be a Temporary Member of the Council.

(*b*) The Governor may, by writing under his hand, declare that a member of the Executive Council is, by reason of absence or illness, temporarily unable to discharge his functions as a member of the Council, and thereupon that member shall not take part in the proceedings of the Council until he is declared in manner aforesaid to be able again to discharge those functions.

(*c*) The Governor, in making an appointment under this subsection, shall appoint—

(i) in place of an *Ex-officio* Member, a person who holds a public office; and

(ii) in place of an Unofficial Member, a person who is a member of the Legislative Council.

(*d*) The Governor shall forthwith report to Her Majesty through a Secretary of State every appointment made under this subsection.

Tenure of office of Unofficial and Temporary Members of Executive Council.

**5.** The Unofficial Members and Temporary Members of the Executive Council shall hold their seats in the Council during Her Majesty's pleasure:

Provided that the seat of any such member shall become vacant—

(*a*) in the case of an Unofficial Member, if he ceases to be a Chairman of a Council Committee ; or

(*b*) in the case of a Temporary Member, when the member in respect of whose incapacity he has been appointed is declared to be able again to discharge his functions or when the seat of that member in the Council becomes vacant, whichever shall be the earlier.

Determination of questions as to membership of Executive Council.

**6.** Any question whether a person has been validly appointed an Unofficial Member or a Temporary Member of the Executive Council shall be determined by the Governor.

Summoning of and proceedings in Executive Council.

**7.**—(1) The Executive Council shall not be summoned except with the authority of the Governor.

(2) No business except that of adjournment shall be transacted by the Executive Council if objection is taken by any member present that there are less than three members present (excluding any member presiding in the absence of the Governor).

(3) Subject to the provisions of subsection (2) of this section, the Executive Council shall not be disqualified for the transaction of business by reason of any vacancy in the membership of the Council, and any proceedings in the Council shall be valid notwithstanding that some person who was not entitled to do so took part in those proceedings.

Summoning of persons to assist Executive Council.

**8.** The Governor may summon any person to a meeting of the Executive Council notwithstanding that that person is not a member of the Council when, in the opinion of the Governor, the business before the Council renders the presence of that person desirable.

Presiding in Executive Council.

**9.**—(1) The Governor shall, so far as is practicable, preside at meetings of the Executive Council.

(2)—(*a*) In the absence of the Governor there shall preside at any meeting of the Executive Council—

(i) such member of the Council as the Governor may appoint ;

(ii) in the absence of a member so appointed, the senior *Ex-officio* member present.

(*b*) For the purposes of this paragraph the *Ex-officio* Members of the Council shall have seniority in the order in which their offices are mentioned in section 4(1)(*a*) of this Constitution.

Governor to consult Executive Council.

**10.** In the exercise of his powers and the performance of his duties the Governor shall consult with the Executive Council, except in cases:—

(*a*) which are of such nature that, in his judgment, Her Majesty's

service would sustain material prejudice by reason of his consulting the Executive Council thereon ; or

(*b*) in which the matters to be decided are, in his judgment, too unimportant to require their advice ; or

(*c*) in which the matters to be decided are, in his judgment, too urgent to admit of the giving of their advice by the time within which it may be necessary for him to act.

In every case falling within paragraph (*c*) of this section, the Governor shall as soon as practicable communicate to the Executive Council the measures which he shall have adopted, with the reasons therefor.

Governor to submit questions.

**11.** The Governor shall alone be entitled to submit questions to the Executive Council ; but if the Governor shall decline to submit any question to the Executive Council when requested in writing by any member so to do, it shall be competent to such member to require that there be recorded upon the minutes of the Council his written application, together with the answer returned by the Governor thereto.

Governor may act in opposition to Executive Council.

**12.**—(1) The Governor may act in opposition to the advice given to him by the members of the Executive Council, if he shall in any case consider it right so to do ; but in any such case he shall report the matter to Her Majesty through a Secretary of State at the first convenient opportunity, giving the reasons for his action, and shall send to a Secretary of State copies of such of the minutes of the Council as are relevant thereto.

(2) Whenever the Governor shall so act against the advice of the Executive Council it shall be competent to any member to require that there be recorded upon the minutes of the Council any advice or opinion he may give upon the question with the reasons therefor.

Oath by members of Executive Council.

**13.** Before assuming the functions of his office a member of the Executive Council shall make before the Governor, or some other person authorised in that behalf by the Governor, an oath for the due execution of his office in the form set out in the schedule to this Constitution.

## PART III

## LEGISLATIVE COUNCIL

Legislative Council.

**14.**—(1) There shall be a Legislative Council for St. Helena which shall consist of—

(*a*) the Governor ;

(*b*) two *Ex-officio* Members, that is to say, the persons for the time being discharging the functions of—

(i) the Government Secretary of St. Helena ; and

(ii) the Treasurer of St. Helena ;

(*c*) twelve Elected Members, who shall be persons qualified for election in accordance with the provisions of this Constitution ; and

(*d*) such Temporary Members as may be appointed under subsection (2) of section 15 of this Constitution.

(2) The Elected Members of the Legislative Council shall be elected in the manner provided by any law for the time being in force in St. Helena.

(3) For the purpose of electing the Elected Members of the Legislative Council the Governor by regulations published in the Gazette shall provide for dividing St. Helena into electoral areas, and shall prescribe the names and boundaries of the electoral areas so established.

Temporary members of Legislative Council.

**15.**—(1) The Governor may, by writing under his hand, declare that an *Ex-officio* Member of the Legislative Council is, by reason of absence or illness, temporarily unable to discharge his functions as a member of the Council, and thereupon that member shall not take part in the proceedings of the Council until he is declared in manner aforesaid to be again able to discharge those functions.

(2) If an *Ex-officio* Member of the Legislative Council is incapable of taking part in the proceedings of the Council by reason of a declaration made under subsection (1) of this section, the Governor may appoint to be a Temporary Member of the Council a person who holds a public office.

(3) The Governor shall forthwith report to Her Majesty through a Secretary of State any appointment made under this section.

(4) A person appointed under this section to be a Temporary Member of the Legislative Council—

(*a*) shall hold his seat in the Council during Her Majesty's pleasure ; and

(*b*) shall vacate his seat in the Council when he is informed by the Governor that the member on account of whose incapacity he was appointed is again able to perform his functions as a member of the Council, or when the vacancy has otherwise ceased to exist.

Qualifications and disqualifications of Elected Members of Legislative Council.

**16.**—(1) A person elected an Elected Member of the Legislative Council shall be a British subject who has attained the age of twenty-one years and shall be a person who is registered as a voter, and no person shall be qualified to be so elected who—

(*a*) is, by virtue of his own act, under any acknowledgment of allegiance, obedience or adherence to a foreign power or state ;

(*b*) holds or is acting in, any public office ;

(*c*) is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law for the time being in force in any part of the Commonwealth ;

(*d*) is certified to be insane or otherwise adjudged to be of unsound mind under any law for the time being in force in St. Helena ;

(*e*) is under sentence of death imposed on him by a court in any part of the Commonwealth, or is under a sentence of imprisonment (by whatever named called) for a term of or exceeding twelve months, other than a sentence in lieu of a fine, but including a suspended sentence, imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court ;

(*f*) is disqualified for membership of the Council under any law for the time being in force in St. Helena relating to offences connected with elections ; or

(*g*) holds, or is acting in, any office the functions of which involve any responsibility for, or in connection with, the conduct of any election or the compilation or revision of any electoral register.

(2) For the purpose of paragraph (*e*) of subsection (1) of this section two or more terms of imprisonment that are required to be served consecutively shall be regarded as a single term of imprisonment for the aggregate period of those terms.

Tenure of office of Elected Members of Legislative Council.

**17.** The seat of an Elected Member of the Legislative Council shall become vacant—

(*a*) upon a dissolution of the Council ;

(*b*) if for a consecutive period of six months he is absent from meetings of the Council without the prior permission of the Governor ;

(*c*) if any circumstance arises that, if he were not a member of the Council, would cause him to be disqualified for election thereto by virtue of paragraph (*a*), (*b*), (*c*), (*d*), (*f*) or (*g*) of subsection (1) of section 16 of this Constitution ; or

(*d*) in the circumstances mentioned in section 18 of this Constitution.

Vacation of seat on sentence, etc.

**18.**—(1) Subject to the provisions of this section, if an Elected Member of the Legislative Council is sentenced by a court in any part of the Commonwealth to death or to imprisonment (by whatever name called) for a term of or exceeding twelve months, he shall forthwith cease to discharge his functions as a member of the Council, and his seat in the Council shall become vacant at the expiration of a period of thirty days thereafter:

Provided that the Governor may, at the request of the member, from time to time extend that period for thirty days to enable the member to pursue any appeal in respect of his conviction or sentence, so however that extensions of time exceeding in the aggregate three hundred and thirty days shall not be granted without the approval of the Council signified by resolution.

(2) If at any time before the member vacates his seat he receives a free pardon or his conviction is set aside or his sentence is reduced to a term of imprisonment of less than twelve months or a punishment other than imprisonment is substituted, his seat in the Legislative Council shall not become vacant under the provisions of this section, and he may again discharge his functions as a member of the Council.

(3) For the purpose of this section two or more terms of imprisonment that are required to be served consecutively shall be regarded as a single term of imprisonment for the aggregate period of those terms.

Determination of questions as to membership of Legislative Council.

**19.**—(1) Any question whether—

(*a*) a person has been validly appointed a Temporary Member of the Legislative Council ; or

(*b*) a person has vacated his seat therein as such a member,

shall be determined by the Governor.

(2) Any question whether—

(*a*) a person has been validly elected an Elected Member of the Legislative Council ; or

(*b*) an Elected Member of the Legislative Council has vacated his seat therein or is required under section 18 of this Constitution to cease to discharge his functions as a member,

shall be determined by the Supreme Court in accordance with any law for the time being in force in St. Helena.

Law as to elections.

**20.** Subject to the provisions of this Constitution, a law enacted under this Constitution may provide for the election of members of the Legislative Council, and in particular, and without prejudice to the generality of the foregoing power, may provide for—

(*a*) the qualifications and disqualifications of voters ;

(*b*) the registration of voters ;

(*c*) the ascertainment of the qualifications of candidates for election and of voters ;

(*d*) the holding of elections ; and

(*e*) the definition and trial of offences connected with elections and the imposition of penalties therefor, including disqualification for membership of the Legislative Council, or for registration as a voter, or for voting at elections, of any person concerned in any such offence.

## PART IV

### COUNCIL COMMITTEES

Council Committees.

**21.**—(1) There shall be such number of Council Committees as the Governor may from time to time determine.

(2) A Council Committee shall consist of—

(*a*) such number of persons who are members of the Legislative Council as the Governor may decide ;

(*b*) such number, if any, of persons who are not members of the Legislative Council as the Governor may decide :

Provided that at any one time the majority of the members of a Council Committee shall be persons who are members of the Legislative Council.

(3) There shall be a Chairman of each Council Committee who shall be a member of the Legislative Council.

(4) The Chairman and the other members of a Council Committee shall be appointed by the Governor by notice in the Gazette.

Functions of Council Committees.

**22.** A Council Committee shall be appointed by the Governor for such general or special purposes as in his opinion would be most suitably regulated and managed by means of a committee.

Rules and procedure, etc., of Council Committees.

**23.** The Governor may by order make, vary or revoke the rules of procedure of each Council Committee and may likewise determine the quorum and place of meeting of each Committee.

Tenure of office of members of Council Committees.

**24.**—(1) The office of a member of a Council Committee shall become vacant—

(*a*) if his appointment is terminated by the Governor by notice in the Gazette ;

(*b*) in the case of a person who was an Elected Member of the Legislative Council at the time of his appointment—

(i) if he ceases to be an Elected Member of the Legislative Council otherwise than by reason of a dissolution of the Council ; or

(ii) at the first sitting of the Legislative Council after any dissolution of the Council ; and

(*c*) in the case of a member who was not an Elected Member of the Legislative Council at the time of his appointment, if he is elected to be a member of the Council.

Council Committees charged with responsibilities.

**25.** The Governor may, by direction in writing, charge any Council Committee with responsibility for any subject or department of Government.

Governor may confer power on Council Committees.

**26.**—(1) The Governor may by order published in the Gazette declare that, subject to such limitations and conditions as may be specified in the order, any of the powers conferred or duties imposed on the Governor or on any authority, as the case may be, under the provisions of any local enactment, may be exercised or shall be performed by a Council Committee.

(2) Where by virtue of a declaration made under subsection (1) of this section, any power may be exercised or any duty is to be performed by a Council Committee then—

(*a*) the Governor or, as the case may be, the authority, shall not exercise such power or perform such duty ; and

(*b*) in the exercise of such power or the performance of such duty, the Committee may rescind or vary anything previously done by the Governor or, as the case may be, by the authority, to the same extent as such thing could, but for the provisions of paragraph (*a*) to this subsection, have been rescinded or varied by the Governor or, as the case may be, by the authority.

(3)—(*a*) The Governor may by a further order published in like manner revoke or vary any order made under subsection (1) of this section.

(*b*) Where, by reason that any such order has been so revoked or varied, any power or duty ceases to be exercisable or is no longer to be performed by a Council Committee, anything done by the Committee, in the exercise or performance of such power or duty shall, if continuing to be of effect immediately before such revocation or variation, continue to have effect, but may be rescinded or varied by the Governor or, as the case may be, by the authority, as if it had been done by that authority.

(4) Any order made by the Governor under subsection (1) or subsection (2) of this section may contain such modifications of or adaptations to the local enactment to which the order refers as appears to the Governor to be necessary, and accordingly any local enactment to which an order refers shall be read and construed subject to the provisions of that order.

(5) For the purposes of this section—

(*a*) " authority " means any statutory authority, board or committee ;

(*b*) " local enactment " means any law enacted by the legislature of St. Helena, and includes any subsidiary instrument ;

(*c*) " power " does not include power to make any subsidiary instrument ;

(*d*) " subsidiary instrument " means any proclamation, order in council, order, rule, regulation or byelaw made under any law enacted by the legislature of St. Helena.

## PART V

### LEGISLATION AND PROCEDURE IN LEGISLATIVE COUNCIL

Power to make laws.

**27.** Subject to the provisions of this Constitution—

(*a*) the Governor, with the advice and consent of the Legislative Council, may make laws for the peace, order and good government of St. Helena;

(*b*) the Governor may make laws for the peace, order and good government of Ascension and Tristan da Cunha, respectively.

Royal Instructions.

**28.** Subject to the provisions of this Constitution, the Governor and the Legislative Council shall, in the transaction of business and the making of laws, conform as nearly as may be to the directions contained in any Instructions under Her Majesty's Sign Manual and Signet which may from time to time be addressed to the Governor in that behalf.

Standing Orders.

**29.** Subject to the provisions of this Constitution and of any Instructions under Her Majesty's Sign Manual and Signet, the Legislative Council may from time to time make, amend and revoke Standing Orders for the regulation and orderly conduct of its own proceedings and the despatch of business, and for the passing, intituling and numbering of Bills and for the presentation thereof to the Governor for assent; but no such Standing Orders or amendment or revocation thereof shall have effect unless they have been approved by the Governor.

Presiding in Legislative Council.

**30.**—(1) The Governor shall, so far as is practicable, preside at meetings of the Legislative Council.

(2)—(*a*) In the absence of the Governor there shall preside at any meeting of the Legislative Council—

(i) such member of the Council as the Governor may appoint;

(ii) in the absence of a member so appointed, the senior *Ex-officio* Member present.

(*b*) For the purposes of this subsection the *Ex-officio* Members of the Legislative Council shall have seniority in the order in which their offices are mentioned in section 14(1)(*b*) of this Constitution.

Legislative Council may transact business notwithstanding vacancies.

**31.** The Legislative Council shall not be disqualified for the transaction of business by reason of any vacancy in the membership thereof (including any vacancy not filled when the Council is first constituted or is reconstituted at any time) and any proceedings therein shall be valid notwithstanding that some person who was not entitled to do so sat or voted in the Council or otherwise took part in those proceedings.

Quorum.

**32.**—(1) If at any sitting of the Legislative Council a quorum is not present and any member of the Legislative Council who is present objects on that account to the transaction of business and, after such interval as may be prescribed in the Standing Orders of the Legislative Council, the person presiding at the sitting ascertains that a quorum is still not present, he shall adjourn the Legislative Council.

(2) For the purposes of this section a quorum shall consist of six members of the Legislative Council in addition to the person presiding.

Voting.

**33.**—(1) Save as otherwise provided in this Constitution, all questions proposed for decision in the Legislative Council shall be determined by a majority of votes of the members present and voting.

(2) The Governor or other member presiding shall not vote unless on any question the votes are equally divided, in which case he shall have and exercise a casting vote.

Governor's reserved power.

**34.**—(1) If the Governor considers that it is expedient—

(*a*) in the interests of public order, public faith or good government (which expressions shall, without prejudice to their generality, include the responsibility of St. Helena as a territory within the Commonwealth and all matters pertaining to the creation or abolition of any public office or to the salary or other conditions of service of any public officer), or

(*b*) in order to secure detailed control of the finances of St. Helena during such time as, by virtue of the receipt of financial assistance by St. Helena from Her Majesty's Exchequer in the United Kingdom for the purpose of balancing the annual budget or otherwise, such control rests with Her Majesty's Government,

that any Bill introduced, or any motion proposed, in the Legislative Council should have effect, then, if the Legislative Council fail to pass the Bill or to carry the motion within such time and in such form as the Governor thinks reasonable and expedient, the Governor may, at any time that he thinks fit, and notwithstanding any provisions of this Constitution or of any other law in force in St. Helena or of any Standing Orders of the Council, declare that the Bill or motion shall have effect as if it had been passed or carried by the Council either in the form in which it was introduced or proposed or with such amendments as the Governor thinks fit which have been moved or proposed in the Council or any committee thereof; and the Bill or the motion shall be deemed thereupon to have been so passed or carried, and the provisions of this Constitution, and in particular the provisions relating to assent to Bills and disallowance of laws, shall have effect accordingly.

(2) The Governor shall forthwith report to a Secretary of State every case in which he makes any such declaration and the reasons therefor.

(3) If any member of the Legislative Council objects to any declaration made under this section, he may, within fourteen days of the making thereof, submit to the Governor a statement in writing of his reasons for so objecting, and a copy of the statement shall, if furnished by the member, be forwarded by the Governor as soon as practicable to a Secretary of State.

(4) Any declaration made under this section other than a declaration relating to a Bill may be revoked by a Secretary of State and the Governor shall forthwith cause notice of the revocation to be published in the Gazette; and from the date of such publication any motion that is deemed to have been carried by virtue of the declaration shall cease to have effect and the provisions of subsection (2) of section 38 of the Interpretation Act 1889(a) shall apply to the revocation as they apply to the repeal of an Act of Parliament.

(a) 1889 c. 63.

Introduction of Bills.

**35.**—(1) Subject to the provisions of this Constitution and of the Standing Orders of the Legislative Council, any member may introduce any Bill or propose any motion for debate in, or may present any petition to, the Council and the same shall be debated and disposed of according to the Standing Orders of the Council.

(2) Except on the recommendation of the Governor the Legislative Council shall not—

(*a*) proceed upon any Bill (including any amendment to a Bill) which, in the opinion of the person presiding in the Council, makes provision for imposing or increasing any tax, for imposing or increasing any charge on the revenues or other funds of St. Helena or for altering any such charge otherwise than by reducing it or for compounding or remitting any debt due to St. Helena ;

(*b*) proceed upon motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding in the Council, is that provisions would be made for any of the purposes aforesaid ; or

(*c*) receive any petition which, in the opinion of the person presiding in the Council, requests that provision be made for any of the purposes aforesaid.

Assent to Bills.

**36.**—(1) A Bill shall not become a law until—

(*a*) the Governor has assented to it in Her Majesty's name and on Her Majesty's behalf and has signed it in token of his assent ; or

(*b*) Her Majesty has given Her assent to it through a Secretary of State and the Governor has signified Her assent by proclamation published in the Gazette.

(2) When a Bill is presented to the Governor for his assent, he shall, subject to the provisions of this Constitution and of any Instructions addressed to him under Her Majesty's Sign Manual and Signet or through a Secretary of State, declare that he assents, or refuses to assent, to it, or that he reserves the Bill for the signification of Her Majesty's pleasure:

Provided that the Governor shall reserve for the signification of Her Majesty's pleasure—

(*a*) any Bill which appears to him to be in any way repugnant to, or inconsistent with, the provisions of this Constitution ; and

(*b*) any Bill which determines or regulates the privileges, immunities or powers of the Legislative Council or of its members ;

unless he has been authorized by a Secretary of State to assent to it.

Disallowance of laws.

**37.**—(1) Any law made by the Governor or to which the Governor has given his assent may be disallowed by Her Majesty through a Secretary of State.

(2) Whenever a law has been disallowed by Her Majesty the Governor shall, as soon as practicable, cause notice of the disallowance to be published in the Gazette, and the law shall be annulled with effect from the date of the publication of that notice.

(3) The provisions of subsection (2) of section 38 of the Interpretation Act 1889 shall apply to the annulment of any law under this section as they apply to the repeal of an Act of Parliament, save that any enactment repealed or amended by or in pursuance of that law shall have effect as from the date of the annulment as if that law had not been made.

Oath of Allegiance.

**38.** Except for the purpose of enabling this section to be complied with, no member of the Legislative Council shall be permitted to take part in its proceedings until he has made before the Governor, or some other person authorized in that behalf by the Governor, an oath of allegiance in the form set out in the schedule to this Constitution.

Privileges of Legislative Council and members.

**39.** A law enacted under this Constitution may determine and regulate the privileges, immunities and powers of the Legislative Council and its members, but no such privileges, immunities or powers shall exceed those of the Commons' House of Parliament of the United Kingdom or of the members thereof.

Sessions.

**40.**—(1) Subject to the provisions of this Constitution, the sessions of the Legislative Council shall be held at such places and begin at such times as the Governor may from time to time by proclamation appoint.

(2) There shall be at least one session of the Legislative Council in every year so however that there shall be an interval of less than twelve months between the last sitting in one session and the first sitting in the next session.

Prorogation and dissolution.

**41.**—(1) The Governor may at any time, by proclamation published in the Gazette, prorogue or dissolve the Legislative Council.

(2) The Governor shall dissolve the Legislative Council at the expiration of four years from the date when the Legislative Council first meets after any dissolution unless it has been sooner dissolved.

General election.

**42.** There shall be a general election at such time within three months after every dissolution of the Legislative Council as the Governor shall by proclamation published in the Gazette appoint.

## PART VI

### MISCELLANEOUS

Public seal.

**43.** The Governor shall keep and use the public seal for sealing all things that should pass that seal.

Grants of land.

**44.** Subject to the provisions of any law for the time being in force in St. Helena and its Dependencies, the Governor or any person duly authorized by him in writing under his hand may, in Her Majesty's name and on Her behalf, make and execute grants and dispositions of land or other immovable property within St. Helena and its Dependencies which may be lawfully granted or disposed of by Her Majesty.

Governor's power of pardon.

**45.** The Governor may, in Her Majesty's name and on Her Majesty's behalf—

(*a*) grant to any person concerned in or convicted of any offence a pardon, either free or subject to lawful conditions;

(*b*) grant to any person a respite, either indefinite or for a specified period, of the execution of any punishment imposed on that person for any offence;

(*c*) substitute a less severe form of punishment for any punishment imposed on any person for any offence; and

(*d*) remit the whole or part of any punishment imposed on any person for an offence or of any penalty or forfeiture otherwise due to the Crown on account of any offence.

Constitution of offices, appointments, etc.

**46.**—(1) The Governor, in Her Majesty's name and on Her behalf, may constitute such offices for St. Helena and its Dependencies as may lawfully be constituted by Her Majesty.

(2) Subject to the provisions of any law in force in St. Helena and its Dependencies the Governor may make appointments (including appointments on promotion and transfer) to any office in the public service and he may exercise disciplinary control over any person holding such office or remove such person from office.

(3) Any person appointed to such an office shall, unless it is otherwise provided by any such law, hold that office during Her Majesty's pleasure.

Resignations.

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

Provided that in the case of a member of the Legislative Council his resignation shall be addressed to the Governor.

(2) The resignation of any person from any office established by this Constitution shall take effect when the writing signifying the resignation is received by the person or authority to whom it is addressed or by any person authorized by that person or authority to receive it.

Reappointments and concurrent appointments.

**48.**—(1) Where any person has vacated any office established by this Constitution, he may, if qualified, again be appointed or elected to hold that office in accordance with the provisions of this Constitution.

(2) Where a power is conferred by this Constitution upon any person to make any appointment to any office, a person may be appointed to that office notwithstanding that some other person may be holding that office when that other person is on leave of absence pending the relinquishment of the 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 upon the holder of that office, the person last appointed shall be deemed to be the sole holder of the office.

Interpretation.

**49.**—(1) In this Constitution, unless the context otherwise requires,

"Governor" means the Governor and Commander-in-Chief of St. Helena and its Dependencies;

"Dependencies" means the Islands of Ascension, Tristan da Cunha, Gough, Nightingale and Inaccessible;

"Gazette" means the St. Helena Government Gazette;

"Legislative Council" means the Legislative Council for the time being established for St. Helena;

"public office" means, subject to the provisions of the next following subsection, an office of emolument in the public service;

"public officer" means the holder of any public office, and includes a person appointed to act in any public office;

"public seal" means the public seal of St. Helena;

" the public service " means the service of the Crown in a civil capacity in respect of the government of St. Helena and its Dependencies ;

" session ", in relation to the Legislative Council, means the sittings of the Council commencing when the Council first meets after being constituted under this Constitution, or after its prorogation or dissolution at any time, and terminating when the Council is prorogued or is dissolved without having been prorogued ;

" sitting ", in relation to the Legislative Council, means a period during which the Council is sitting continuously without adjournment and includes any period during which the Council is in committee.

(2) For the purposes of this Constitution, a person shall not be considered to hold a public office by reason only that he—

(*a*) is in receipt of any remuneration or allowance as a member of the Executive Council, a Council Committee or the Legislative Council ; or

(*b*) is in receipt of a pension or other like allowance in respect of service under the Crown.

(3) In this Constitution, unless the context otherwise requires, a reference to the holder of an office by the term designating his office shall be construed as including a reference to any person for the time being lawfully acting in or performing the functions of that office.

(4) Any power conferred by this Constitution to make any proclamation, rule, regulation or order or to give any directions shall be construed as including a power exercisable in like manner to amend or revoke any such proclamation, rule, regulation order or directions.

(5) Where a person is required by this Constitution to make an oath he shall if he so desires be permitted to comply with that requirement by making an affirmation in accordance with the provisions of the schedule to this Constitution.

(6) The Interpretation Act 1889 shall apply, with the necessary adaptations, for the purpose of interpreting this Constitution and otherwise in relation thereto as it applies for the purpose of interpreting and in relation to Acts of Parliament of the United Kingdom.

Sections 1(3), 2(2), 13 and 38.

## SCHEDULE TO THE CONSTITUTION

### FORMS OF OATHS AND AFFIRMATIONS

1. *Oath of Allegiance*

I ..... do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, according to law. So help me God.

2. *Oath for due execution of office*

I ..... do swear that I will well and truly serve Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, in the office of (*here insert the description of the office*). So help me God.

3. *Affirmations.* In the forms above respectively set forth, for the word " swear " there shall be substituted the words " solemnly and sincerely affirm and declare ", and the words " So help me God " shall be omitted.

## SCHEDULE 2 TO THE ORDER

Section 8.

PROVISIONS HAVING EFFECT UNTIL FIRST DISSOLUTION OF THE LEGISLATIVE COUNCIL

Legislative Council.

**1.**—(1) There shall be a Legislative Council for St. Helena which shall consist of—

(*a*) the Governor;

(*b*) two *Ex-officio* Members, that is to say, the persons for the time being discharging the functions of—

(i) the Government Secretary of St. Helena; and

(ii) the Treasurer of St. Helena;

(*c*) two Official Members, appointed by the Governor, in pursuance of instructions given by the Governor by Her Majesty through a Secretary of State by Instrument under the public seal from among the persons who are public officers;

(*d*) four Unofficial Members, appointed by the Governor, in pursuance of instructions given as aforesaid, by Instrument under the public seal from among persons qualified for appointment in accordance with the provisions of this schedule;

(*e*) eight Elected Members, who shall be persons qualified for election in accordance with the provisions of this schedule; and

(*f*) such Temporary Members as may be appointed under sub-paragraph (3) of this paragraph.

(2)—(*a*) The Elected Members of the Legislative Council shall be elected in the manner provided by any law for the time being in force in St. Helena.

(*b*) Of the Elected Members of the Legislative Council—

(i) two shall be elected for Jamestown; and

(ii) one shall be elected for each of six electoral areas outside Jamestown.

(3)—(*a*) If a member of the Legislative Council is incapable of taking part in the proceedings of the Council by reason of a declaration made under head (*b*) of this sub-paragraph the Governor may, by Instrument under the public seal, appoint a person to be a Temporary Member of the Council.

(*b*) The Governor may, by writing under his hand, declare that an *Ex-officio* Member or an Official Member or an Unofficial Member of the Legislative Council is, by reason of absence or illness, temporarily unable to discharge his functions as a member of the Council, and thereupon that member shall not take part in the proceedings of the Council until he is declared in manner aforesaid to be able again to discharge those functions.

(*c*) The Governor, in making an appointment under this sub-paragraph, shall appoint—

(i) in place of an *Ex-officio* Member or of an Official Member, a person who holds a public office; and

(ii) in place of an Unofficial Member, a person qualified for appointment as an Unofficial Member.

(*d*) The Governor shall forthwith report to Her Majesty through a Secretary of State every appointment made under this sub-paragraph.

Qualifications and disqualifications of Unofficial and Elected Members of Legislative Council.

**2.**—(1) A person appointed an Unofficial Member or elected an Elected Member of the Legislative Council shall be a British subject who has attained the age of twenty-one years, and no person shall be qualified to be so appointed or elected who—

(*a*) is, by virtue of his own act, under any acknowledgment of allegiance, obedience or adherence to a foreign power or state;

(*b*) holds, or is acting in, any public office;

(*c*) is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law for the time being in force in any part of the Commonwealth;

(*d*) is certified to be insane or otherwise adjudged to be of unsound mind under any law for the time being in force in St. Helena;

(*e*) is under sentence of death imposed on him by a court in any part of the Commonwealth, or is under a sentence of imprisonment (by whatever name called) for a term of or exceeding twelve months, other than a sentence in lieu of a fine, but including a suspended sentence, imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court;

(*f*) is disqualified for membership of the Council under any law for the time being in force in St. Helena relating to offences connected with elections; or

(*g*) in the case of an Elected Member, holds, or is acting in, any office the functions of which involve any responsibility for, or in connection with, the conduct of any election or the compilation or revision of any electoral register.

(2) For the purpose of head (*e*) of sub-paragraph (1) of this paragraph two or more terms of imprisonment that are required to be served consecutively shall be regarded as a single term of imprisonment for the aggregate period of those terms.

Tenure of office of members of Legislative Council.

**3.**—(1) The Official Members, Unofficial Members and Temporary Members of the Legislative Council shall hold their seats in the Council during Her Majesty's pleasure.

(2) The seat of an Official Member of the Legislative Council shall become vacant—

(*a*) if he ceases to hold a public office;

(*b*) upon a dissolution of the Council;

(*c*) in the circumstances mentioned in paragraph 4 of this schedule.

(3) The seat of an Unofficial Member or an Elected Member of the Legislative Council shall become vacant—

(*a*) upon a dissolution of the Council;

(*b*) if, being an Unofficial Member, he accepts nomination as a candidate for election to the Council, or, being an Elected Member, he accepts appointment as an Unofficial Member;

(*c*) if for a consecutive period of six months he is absent from meetings of the Council without the prior permission of the Governor;

(*d*) if any circumstances arise that, if he were not a member of the Council, would cause him to be disqualified for appointment or, as the case may be, election thereto by virtue of heads (*a*), (*b*), (*c*), (*d*), (*f*) or (*g*) of sub-paragraph (1) of paragraph 2 of this schedule; or

(*e*) in the circumstances mentioned in paragraph 4 of this schedule.

(4) The seat of a Temporary Member of the Legislative Council shall become vacant—

(*a*) at such time as may be specified in the Instrument by which he was appointed;

(*b*) when the member in respect of whose incapacity he has been appointed is declared to be able again to discharge his functions; or

(*c*) when the seat of that member in the Council becomes vacant,

whichever shall be the earliest.

Vacation of seat on sentence.

**4.**—(1) Subject to the provisions of this paragraph, if an Official Member, an Unofficial Member or an Elected Member of the Legislative Council is sentenced by a court in any part of the Commonwealth to death or to imprisonment (by whatever name called) for a term of or exceeding twelve months, he shall forthwith cease to discharge his functions as a member of the Council, and his seat in the Council shall become vacant at the expiration of a period of thirty days thereafter:

Provided that the Governor may, at the request of the member, from time to time extend that period for thirty days to enable the member to pursue any appeal in respect of his conviction or sentence, so however that extensions of time exceeding in the aggregate three hundred and thirty days shall not be granted without the approval of the Council signified by resolution.

(2) If at any time before the member vacates his seat he receives a free pardon or his conviction is set aside or his sentence is reduced to a term of imprisonment of less than twelve months or a punishment other than imprisonment is substituted, his seat in the Legislative Council shall not become vacant under the provisions of this paragraph, and he may again discharge his functions as a member of the Council.

(3) For the purpose of this paragraph two or more terms of imprisonment that are required to be served consecutively shall be regarded as a single term of imprisonment for the aggregate period of those terms.

Determination of questions as to membership of Legislative Council.

**5.**—(1) Any question whether—

(*a*) a person has been validly appointed an Official Member, an Unofficial Member or a Temporary Member of the Legislative Council; or

(*b*) a person has vacated his seat therein as such a member or is required by paragraph 4 of this schedule to cease to discharge his functions as such a member,

shall be determined by the Governor.

(2) Any question whether—

(*a*) a person has been validly elected an Elected Member of the Legislative Council ; or

(*b*) an Elected Member of the Legislative Council has vacated his seat therein or is required under paragraph 4 of this schedule to cease to discharge his functions as a member,

shall be determined by the Supreme Court in accordance with any law for the time being in force in St. Helena.

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## EXPLANATORY NOTE

*(This Note is not part of the Order.)*

This Order provides for a new Constitution for St. Helena and its Dependencies. The Executive Council is reconstituted and a Legislative Council, which will be reconstituted in a year's time, replaces the existing Advisory Council. Council Committees are established which have executive functions.