

## SCHEDULE

### THE CONSTITUTION OF ST HELENA, ASCENSION AND TRISTAN DA CUNHA

## CHAPTER 1

### ST HELENA

#### PART 10

#### MISCELLANEOUS

#### **Interpretation**

**115.** In this Chapter, unless it is otherwise provided or required by the context—

“Ascension” means Ascension Island;

“breach”, in relation to any provision of this Chapter, includes a failure to comply with that provision, and cognate expressions shall be construed accordingly;

“Consolidated Fund” means the Fund established by section 98;

“court” means any subordinate court, the Supreme Court or the Court of Appeal, and includes Her Majesty in Council;

“disciplinary law”, in relation to a disciplined force, means the law regulating the discipline of that force;

“disciplinary offence” means an offence against the disciplinary law;

“disciplined force” means any police force of St Helena, any prison service of St Helena, any fire service of St Helena, any naval, military or air force raised in St Helena under the law of St Helena, or any visiting force;

“financial year” means the period of twelve months beginning on the first day of April in any year or such other day as the Legislature may prescribe;

“functions” include powers and duties;

“*Gazette*” means the St Helena Government Gazette;

“judge” means the Chief Justice or another judge of the Supreme Court, the President of the Court of Appeal, a Justice of Appeal, an acting judge of the Supreme Court, or an Acting Justice of Appeal;

“judicial officer” means a justice of the peace, a judge of a subordinate court, a Coroner or other person who is authorised to exercise the powers of a judge of a subordinate court;

“law” means law in force in St Helena, and includes an Ordinance, and any instrument made under an Ordinance, and any other instrument having the force of law and any unwritten rule of law, and “lawful” and “lawfully” shall be construed accordingly;

“legal representative” means a person who—

- (a) is entitled to practise before the court or other tribunal or authority exercising jurisdiction or power in respect of a person who is arrested, detained, or charged with a criminal offence or is a party to any other proceeding; and
- (b) has an effective opportunity to represent that person—
  - (i) by appearing before that court or other tribunal or authority at the hearing of the proceeding or the process through which it is exercising that jurisdiction or power, in St Helena or in any place outside St Helena where it may lawfully sit; or

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- (ii) in the case of a proceeding in the Supreme Court or the Court of Appeal when sitting in a place outside St Helena, by participating in that proceeding by teleconference or other means of electronic, oral or written communication;

“meeting”, in relation to the Legislative Council, means the sitting or sittings of the Council commencing when the Council first meets at a time and place determined or appointed under section 61 and terminating when the Council is adjourned *sine die* or to a time and place so determined or appointed for a subsequent meeting, or is dissolved;

“member”, in relation to a disciplined force, includes any person who, under the disciplinary law, is subject to that discipline;

“minor” means a person who has not attained the age of eighteen years or such other age as may be prescribed for the purposes of this Chapter by any other law;

“officer of the St Helena Public Service” means the holder of any office in the St Helena Public Service and any other employee of the Public Service (except a casual worker), and includes a person appointed to act as an officer of the St Helena Public Service;

“Ordinance” means a law made by a Legislature in and for St Helena;

“period of public emergency” means any period during which—

- (a) there is, in or affecting St Helena, a war or other public emergency threatening the life of the nation; and
- (b) a proclamation of a state of emergency is in force under a law;

“St Helena Public Service” means the service of the Crown in a civil capacity in respect of the government of St Helena, and includes service as a member of any police force, prison service or fire service of St Helena; but does not include service as a judge, a judicial officer or a Complaints Commissioner, or service as a member of the Legislative Council, a Council Committee, the Executive Council, the Judicial Service Commission, the Public Accounts Committee, the Advisory Committee on the Prerogative of Mercy or, unless otherwise provided by a law, of any other public authority;

“St Helenian status” means St Helenian status as provided for under the Immigration Control Ordinance or any Ordinance amending or replacing that Ordinance;

“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 of the whole, and “sitting day” shall be construed accordingly;

“subordinate court” means a court of St Helena subordinate to the Supreme Court that has been established by Ordinance, and includes the exercise of any power or jurisdiction in relation to an inquiry conferred on a Coroner by the Coroners Ordinance or any Ordinance amending or replacing that Ordinance;

“Tristan da Cunha” means the Island of Tristan da Cunha, Gough Island, Nightingale Island and Inaccessible Island;

“visiting force” means any naval, military or air force raised in, or under the law of, a country other than St Helena, one or more members of which are lawfully in St Helena while on service in that capacity;

“wrongfully removed or retained child” means a child under the age of sixteen years who has been wrongfully removed to or retained in the territory of a state that is a contracting party to the Convention on the Civil Aspects of International Child Abduction, signed at The Hague on 25 October 1980.

### **References to the holder of an office to include a person acting in the office**

**116.** In this Chapter, unless it is otherwise provided or required by the context, a reference to the holder of an office by the term designating his or her office shall be construed as including a reference to any person acting in that office or, to the extent of his or her authority, otherwise performing the functions of that office.

### **Power to amend and revoke instruments, etc**

**117.—(1)** Any power conferred by this Chapter to make any subsidiary instrument or to give any instructions or directions shall be construed as including a power exercisable in like manner to amend or revoke any such instrument, instructions or directions.

(2) For the purposes of this section, “subsidiary instrument” means any proclamation, regulation, order, rule or other like instrument having the force of law.

### **Appointments**

**118.—(1)** Where any person has vacated any office (including any seat in the Legislative Council) established by this Chapter, he or she may, if qualified, again be appointed or elected or otherwise selected to hold that office in accordance with this Chapter.

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

(3) In this Chapter, unless it is otherwise provided or required by the context, any reference to power to make appointments to an office shall be construed as including reference to power to make appointments on promotion and transfer to that office and power to appoint a person to act in that office during any period when it is vacant or the holder of it is unable (whether by reason of absence or infirmity of body or mind or any other cause) to perform the functions of that office.

(4) Where by this Chapter any person is directed, or power is conferred on any person or authority to appoint a person, to act in an office if the holder of it is unable to perform the functions of that office, the validity of any performance of those functions by the person so directed or of any appointment made in exercise of that power shall not be called into question in any court on the grounds that the holder of the office is not unable to perform the functions of the office.

### **Removal from office**

**119.** References in this Chapter to the power to remove an officer of the St Helena Public Service from his or her office shall be construed as including references to any power conferred by any law to require or permit that officer to retire from the Public Service and to any power or right to terminate a contract on which a person is employed in the Public Service and to determine whether any such contract shall or shall not be renewed.

### **Resignations**

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

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(2) The resignation of any person from any office established by or under this Chapter takes effect when the writing signifying the resignation is received by the person or authority to whom it is addressed or by any other person authorised by that person or authority to receive it.