

2021 No. 895

SOUTH ATLANTIC TERRITORIES

**The St Helena, Ascension and Tristan da Cunha Constitution
(Amendment) Order 2021**

Made - - - - - *21st July 2021*

Laid before Parliament *28th July 2021*

Coming into force in accordance with article 1(3)

At the Court at Windsor Castle, the 21st day of July 2021

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by section 112 of the Saint Helena Act 1833(a), the British Settlements Acts 1887 and 1945(b) and of all other powers enabling Her to do so, is pleased, by and with the advice of Her Privy Council, to order, and it is ordered, as follows:

Citation, publication, commencement and interpretation

1.—(1) This Order may be cited as the St Helena, Ascension and Tristan da Cunha Constitution (Amendment) Order 2021.

(2) This Order shall be published in the Gazette.

(3) This Order shall take effect on the day appointed by the Governor, acting in his or her discretion, by proclamation published in the Gazette.

(4) In this Order, “the principal Order” means the St Helena, Ascension and Tristan da Cunha Constitution Order 2009(c), and this order shall be construed as one with the principal Order.

Amendment of Schedule to the principal Order

2.—(1) Chapter 1 of the Schedule to the principal Order is amended as follows.

(2) In section 30 (Advisory Committee on the Prerogative of Mercy)—

(a) in subsection (1), omit “in his or her discretion but after consulting the Executive Council” and substitute “after consultation with the Chief Minister”;

(b) in subsection (2), omit “member of the Executive Council” wherever it occurs and substitute “Minister”; and

(a) 1833 c.85.

(b) 1887 c.54 and 1945 c.7.

(c) S.I. 2009/1751.

- (c) in subsection (5), omit “in his or her discretion but after consulting the Executive Council” and substitute “after consultation with the Chief Minister”.
- (3) In section 35 (Executive Council)—
 - (a) for subsection (1)(a), (b) and (c), substitute—
 - “(a) the Chief Minister appointed by the Governor in accordance with section 37C(1)(a);
 - (b) four other Ministers appointed by the Governor in accordance with section 37C(1)(b); and
 - (c) the Attorney General, as *ex officio* member, without the right to vote.”;
 - (b) omit subsections (2), (3) and (4).
- (4) Omit section 36 (Election of elected members of Executive Council) and substitute—

“Collective responsibility

36. The members of the Executive Council shall be collectively responsible to the Legislative Council for any advice given to the Governor by or under the general authority of the Executive Council and for all things done by or under the authority of any Minister in the execution of his or her office.”.

- (5) After section 36, insert—

“Ministers may meet together to consider advice to be tendered to the Governor

36A.—(1) If the Chief Minister so requests, generally or in a particular case, the Ministers shall meet together in order to consider what advice on any matter they wish to tender to the Governor at a meeting of the Executive Council or otherwise.

(2) The Chief Minister may, consistently with the Code of Conduct made under section 71 and after consulting the Director responsible for administering the department to which those officers belong, call upon officers of the St Helena Public Service to provide the meeting with information, advice and administrative support.

(3) The meeting shall be free to regulate its own procedure.”.

- (6) Omit section 37 (Tenure of office of elected and temporary members of Executive Council) and substitute—

“Election of Chief Minister

37.—(1) There shall be a Chief Minister of St Helena.

(2) An election to the office of Chief Minister shall be held—

(a) at the first meeting of the Legislative Council after a general election; and

(b) at the first meeting of the Legislative Council after—

(i) the office of Chief Minister has become vacant; or

(ii) the Chief Minister has tendered his or her resignation from that office by a signed instrument in writing delivered to the Governor, or is deemed to have tendered his or her resignation under section 37D(3) or 45B(6).

(3) The elected members of the Legislative Council present and voting at a meeting of the Legislative Council shall proceed to elect the Chief Minister, by secret ballot, from among the elected members of the Legislative Council. To be elected, a candidate must receive the votes of a majority of all the elected members of the Legislative Council.

(4) The Standing Orders of the Legislative Council shall make provision for the conduct, consistently with this section, of an election to the office of Chief Minister.”.

- (7) After section 37 (Election of Chief Minister), insert—

“Chief Minister elect to recommend the appointment of the other Ministers

37A.—(1) As soon as practicable after being elected, the Chief Minister elect shall recommend to the Governor, for appointment as Ministers, four other elected members of the Legislative Council who have consented to the nomination.

(2) If the Chief Minister elect does not make a recommendation under subsection (1) within seven days after the date of his or her election to office, that election shall be of no effect. The Legislative Council shall proceed as soon as practicable again to elect a Chief Minister.

Allocation of portfolios

37B.—(1) The Chief Minister elect shall recommend to the Governor the allocation among the prospective Ministers (including the Chief Minister if he or she so desires) of the finance portfolio and such other portfolios as may be necessary or desirable for giving to a Minister the responsibility for any department or function of government which is not, under this Constitution or any other law, the responsibility of some other person or body.

(2) The Chief Minister shall have responsibility for any department or function of government which is not, under this Constitution or any other law, the responsibility of some other person or body, and in respect of which no allocation of a portfolio is for the time being in force.

Appointment of Chief Minister and other Ministers after election of a Chief Minister

37C.—(1) The Governor shall, by instrument under the public seal—

- (a) appoint as Chief Minister the elected member of the Legislative Council elected to that office in accordance with section 37; and
- (b) appoint as Ministers the elected members of the Legislative Council recommended by the Chief Minister in accordance with section 37A(1).

(2) The instrument of appointment shall specify the portfolio or portfolios allocated to the appointee on the recommendation of the Chief Minister.

Appointment and dismissal of Ministers (other than the Chief Minister) and allocation of portfolios at other times

37D.—(1) On the recommendation of the Chief Minister, the Governor shall, by instrument under the public seal—

- (a) revoke the appointment of a Minister;
- (b) appoint an elected member of the Legislative Council as a Minister to fill a vacancy in the Executive Council or bring the number of Ministers (other than the Chief Minister) up to four; or
- (c) assign or reassign the portfolio or portfolios allocated to any Minister.

(2) If, after a dissolution of the Legislative Council and before the next general election, the Chief Minister recommends that a Minister should be appointed, subsection (1)(b) shall have effect as if the dissolution had not occurred.

(3) If, within seven days after the occurrence of a vacancy in the Executive Council that has reduced the number of Ministers (other than the Chief Minister) below the minimum of four, the Chief Minister does not recommend the appointment of an elected member of the Legislative Council who has consented to the nomination to fill the vacancy, the Chief Minister shall be deemed to have tendered to the Governor his or her resignation from that office.

Vacation of office by the Chief Minister

37E.—(1) The office of Chief Minister shall become vacant if the Chief Minister vacates his or her seat in the Legislative Council for any reason other than the dissolution of the Council.

(2) The Chief Minister may tender his or her resignation from office by a signed instrument in writing delivered to the Governor.

Acting Chief Minister and appointment of Deputy

37F.—(1) Subject to subsection (5), whenever the Chief Minister is absent from St Helena or is otherwise unable to discharge the functions of the office, or the office of Chief Minister is vacant, the Governor shall authorise some other Minister to perform those functions.

(2) In exercising his or her powers under subsection (1) the Governor shall—

- (a) act in accordance with the advice of the Chief Minister unless, in the Governor's judgement, it is impracticable to obtain the Chief Minister's advice owing to his or her infirmity of body or mind, or absence;
- (b) if it is impracticable to obtain the Chief Minister's advice, act in accordance with the advice of the Executive Council unless, in his or her judgement, it is impracticable to do so owing to the urgency of the situation; or
- (c) if it is impracticable to obtain the advice of the Executive Council, act in his or her discretion.

(3) Any authorisation under subsection (1) shall be given by the Governor by instrument under the public seal, and may be revoked in like manner.

(4) If any authorisation under subsection (1) is not earlier so revoked, a Minister authorised to perform the functions of Chief Minister shall cease to perform those functions on being notified by the Chief Minister that he or she is about to resume those functions.

(5) For the purposes of subsection (1), the Chief Minister shall not be regarded as absent from St Helena, or as unable to perform the functions of the office, at any time when there is a subsisting designation of a Deputy under subsection (6).

(6) Whenever the Chief Minister is absent from St Helena or otherwise unable to discharge the functions of the office for a period that he or she has reason to believe will be of short duration, the Chief Minister may appoint, by instrument, any other Minister as his or her Deputy for the duration of such period and, in that capacity, to discharge on his or her behalf during such period such of the functions of the office of Chief Minister as may be specified in that instrument.

(7) The power and authority of the Chief Minister shall not be abridged, altered or in any way affected by the appointment of a Deputy under subsection (6), and every such Deputy shall conform to and observe all instructions that the Chief Minister may from time to time address to him or her.

(8) The appointment of a Minister as Deputy under subsection (6) continues for such period as may be specified by the Chief Minister, and a Minister so appointed shall cease to discharge the functions of the office of Chief Minister on being notified by the Chief Minister that he or she is about to resume those functions.

Vacation of office by a Minister other than the Chief Minister

37G.—(1) The office of a Minister other than the Chief Minister shall become vacant if—

- (a) his or her appointment is revoked under section 37D(1)(a);
- (b) the Minister has vacated his or her seat in the Legislative Council for any reason other than the dissolution of the Council; or

(c) the Minister resigns from that office by a signed instrument in writing delivered to the Governor.

(2) Subject to subsection (1), if the office of the Chief Minister becomes vacant or if the Chief Minister tenders his or her resignation or is deemed to have done so under section 37D(3) or 45B(6), the other Ministers shall continue in office until a Chief Minister and other Ministers are appointed, after a new election to the office of Chief Minister.

(3) The Governor shall immediately inform the Chief Minister if he or she receives a signed instrument in writing of resignation from a Minister.

Acting Minister

37H.—(1) Whenever a Minister other than the Chief Minister is absent from St Helena or otherwise temporarily unable to discharge the functions of his or her office, the Governor, acting in accordance with the advice of the Chief Minister, may, by instrument under the public seal—

(a) assign responsibility for the performance of that Minister’s functions to another Minister, including the Chief Minister; or

(b) appoint an elected member of the Legislative Council to be a temporary Minister,

and may specify the period for which such person shall perform the functions of that Minister or shall be a temporary Minister.

(2) If, after a dissolution of the Legislative Council and before the next general election, the Chief Minister advises that a temporary Minister should be appointed, subsection (1) shall have effect as if the dissolution had not occurred.

(3) If any assignment or appointment under subsection (1) has not sooner ended, it shall cease as soon as the Minister who has been absent from St Helena or otherwise temporarily unable to perform the functions of his or her office notifies the other Minister or the elected member that he or she is about to resume those functions.”.

(8) Omit section 38 (Determination of questions as to membership of Executive Council) and substitute—

“Determination of questions as to election of Chief Minister

38. Any question whether a person has been validly elected as the Chief Minister, or whether the office of the Chief Minister has become vacant, shall be determined by the Governor, acting in his or her discretion.”.

(9) In section 39 (Summoning of and proceedings in Executive Council), for subsections (1) to (9), substitute—

“(1) The Executive Council shall be summoned by the Governor acting in his or her discretion; but the Governor shall summon the Executive Council if requested to do so by the Chief Minister.

(2) The agenda for the meeting shall comprise matters included at the request of the Governor, acting in his or her discretion, and matters included at the request of any Minister; and other business that is not on the agenda may be discussed at the meeting at the request of the person presiding or any Minister.

(3) No business except that of adjournment shall be transacted at any meeting of the Executive Council unless there are at least three Ministers present, one of whom must be the Chief Minister or his or her Deputy.

(4) Except so far as otherwise instructed by Her Majesty, generally or in a particular case, the Governor shall, so far as is practicable, attend and preside at meetings of the Executive Council.

(5) In the absence of the Governor, or Governor's Deputy in the case of a subsisting appointment under section 28, from any meeting of the Executive Council, the Chief Minister or his or her Deputy shall preside at the meeting.

(6) Subject to subsection (3), the Executive Council shall not be disqualified from the transaction of business by reason only of a vacancy among its members or the absence of an appointment under section 37D(1)(b), 37F or 37H in a case where any of those sections applies; and the validity of the transaction of business in the Executive Council shall not be affected by reason only of the fact that some person who was not entitled so to do took part in the proceedings.

(7) The Governor, or any person presiding over a meeting of the Executive Council in his or her absence, acting in his or her discretion or at the request of the Chief Minister, may require any officer of the St Helena Public Service to attend a meeting of the Executive Council whenever he or she considers that the business before the Council renders the presence of that officer desirable.

(8) Subject to this Constitution, the Executive Council shall be free to regulate its own procedure which may include provision for remote attendance of members by way of electronic means.”.

(10) Omit section 40 (Invitation of persons to assist Executive Council).

(11) Omit section 41 (Presiding in Executive Council).

(12) Omit section 42 (The Clerk of Councils) and substitute—

“Secretary to Executive Council

42.—(1) The Governor must appoint a Secretary who shall be responsible, in accordance with such instructions as may be given to him or her by the Governor, acting after consultation with the Chief Minister, for arranging the business for, and keeping the minutes of, the meetings of the Executive Council, and for conveying decisions reached at the meetings to the appropriate person or authority.

(2) The Secretary shall also be responsible for the performance, with respect to the Executive Council, of such secretarial and other functions as the Governor, acting after consultation with the Chief Minister, may from time to time direct.”.

(13) In section 43 (Governor to consult Executive Council)—

- (a) in subsection (4), after the words “in any case of urgency the Governor shall”, insert “, if possible, consult the Chief Minister and shall”;
- (b) in subsection (8), omit “Any member of the Executive Council” and substitute “The Chief Minister”.

(14) In section 44 (Governor's special responsibilities)—

- (a) in subsection (1)(e), add “and”;
- (b) in subsection (1)(f), omit “and” and add “.” at the end of the clause;
- (c) in subsection (1), omit paragraph (g);
- (d) after subsection (1), insert—

“(1A) The Governor, acting in his or her discretion, may by directions in writing delegate, with the prior approval of a Secretary of State, to the Chief Minister or any other Minister recommended by the Chief Minister such responsibility for any of the matters specified in subsection (1) (c), (e) and (f) as the Governor may think fit upon such conditions as he or she may impose. A Minister to whom such a responsibility has been delegated shall exercise that responsibility in accordance with section 36.”.

- (e) in subsection (2), after “, acting in his or her discretion, may”, add “, by instrument in writing,”
- (f) in subsection (2), omit “any member of the Executive Council” and substitute “the Chief Minister or any Minister recommended by the Chief Minister”;

(g) in subsection (2), at the end, add “, other than a matter the responsibility for which he or she has delegated to a Minister under subsection (1A)”.

(15) In section 45 (Governor to be kept informed), omit “members of the Executive Council” and substitute “Chief Minister and the other Ministers”.

(16) After section 45, insert—

“A Minister’s responsibility for a department

45A.—(1) Subject to this Constitution and any other law, a Minister who has the responsibility for a department of Government shall exercise general direction and policy control over that department, in accordance with the policies of the Government as determined by the Executive Council.

(2) Subject to the general direction and policy control provided for in subsection (1) and to any law, the department shall be administered by a Director.

(3) The Director shall act as chief policy adviser to the Minister on matters within the department’s responsibility.

Votes of confidence or no confidence in the Government

45B.—(1) At any meeting of the Legislative Council the Chief Minister, or another Minister acting on behalf of the Chief Minister, may give notice of his or her intention to move a motion of confidence in the Government.

(2) Subject to subsection (3), at any meeting of the Legislative Council any three or more elected members of the Council who are not Ministers may give notice of their intention to move a motion of no confidence in the Government.

(3) Notice may not be given under subsection (2) less than three months after the date on which a motion of no confidence in the Legislative Council was last voted upon and lost, unless the Council has sooner been dissolved.

(4) A motion of which notice is given under subsection (1) or subsection (2) must be voted on at a meeting of the Legislative Council, by secret ballot, not sooner than five days but not later than ten days after the date of the notice.

(5) To be carried, a motion of confidence or no confidence must receive the affirmative vote of a majority of all the elected members of the Legislative Council.

(6) If the motion of confidence is lost, or the motion of no confidence is carried, the Chief Minister shall be deemed to have tendered his or her resignation from office at the expiration of five days after the date of the vote, unless, before then, he or she tenders a resignation from office or requests the Governor to dissolve the Legislative Council.”.

(17) In section 48 (Composition of Legislative Council), in paragraph (b), omit sub-paragraph (ii) and substitute—

“(ii) the Attorney General as *ex officio* Member.”.

(18) In section 51 (Tenure of office of Elected Members of Legislative Council)—

(a) renumber the existing text as subsection (1); and

(b) add the following subsection—

“(2) The Governor shall immediately inform the Chief Minister if he or she receives a signed instrument in writing of resignation from an elected member of the Legislative Council.”.

(19) In section 54 (Oaths or affirmations by Members of Legislative Council), omit “, of confidentiality”.

(20) Omit sections 56 to 59, inclusive.

(21) In section 61 (Meetings of Legislative Council)—

(a) omit subsection (1) and substitute—

“(1) Meetings of the Legislative Council shall be held at such places and begin at such times as the Speaker, acting in accordance with the advice of the Chief Minister, shall appoint.”;

(b) after subsection (2), insert—

“(2A) If the first meeting of the Legislative Council after a general election has not commenced within 15 days after the date of the election, the Governor, acting in his or her discretion, shall appoint the earliest practicable time, and the place, for the holding of that meeting.”;

(c) in subsection (3)(a), insert “in circumstances not provided for in subsection (2A),” before “more than six weeks”;

(d) in subsection (3), insert “who are not Ministers” after “Elected Members”;

(e) after subsection (3), insert—

“(3A) If, at a meeting of the Legislative Council, notice is given under section 45B of a motion of confidence or no confidence in the Government, that meeting shall not be adjourned before the motion has been voted upon, except to a place and a time that shall permit the motion to be voted upon within the time limits prescribed in that section, unless the Council is sooner dissolved under section 76(1)(b).”;

(f) omit subsection (4) and substitute—

“(4) There shall be at least one meeting of the Legislative Council in each quarter of each calendar year.”.

(22) In section 67 (Voting), in subsection (5), omit “Members” and substitute “Member”.

(23) After section 69 (Public Accounts Committee), insert—

“Select Committees

69A.—(1) The Governor shall by order make provision for the establishment of at least two Select Committees for purposes of scrutiny of sectors of Government activity.

(2) The Select Committees shall consist of Elected Members, other than Ministers, who shall be appointed by the Governor.

(3) The functions, responsibilities and procedures of the Select Committees shall be determined by the Governor by order.”.

(24) Omit section 71 (Code of Conduct) and substitute—

“Code of Conduct

71. Subject to this Constitution and to any other law, and to the Standing Orders of the Legislative Council—

(a) a Ministerial Code, approved by the Legislative Council, shall detail the behaviour expected of the Chief Minister and other Ministers and the sanctions for failure to comply with those standards; and

(b) a separate Code of Conduct, approved by the Legislative Council, shall detail the behaviour expected of the Speaker and other Members of the Legislative Council, and shall regulate their relationship with officers of the St Helena Public Service.”.

(25) In section 72 (Remuneration of elected members of Executive Council, other Elected Members of Legislative Council, Speaker and Deputy Speaker), omit “elected members of the Executive Council” wherever it occurs in the heading and subsection (1) and substitute “Chief Minister, other Ministers”.

(26) In section 76 (Dissolution of Legislative Council), omit subsections (1) and (2) and substitute—

“The Governor shall dissolve the Legislative Council—

- (a) if the Governor is advised to do so by the Chief Minister, unless the Governor, in his or her judgement, considers that the government of St Helena can be carried on without a dissolution and that a dissolution would not be in the interests of St Helena;
- (b) at the expiration of four years from the date when the Council first meets after any dissolution, unless it has been sooner dissolved; or
- (c) acting with the prior approval of a Secretary of State, at any time if he or she considers that, in his or her judgement, the effective government of St Helena cannot be carried on without a dissolution.”.

(27) In section 77 (Recalling dissolved Legislative Council in case of emergency), in subsection (1), after the reference to “the Governor, acting”, insert “after consultation with the Chief Minister, or if that office is vacant”.

(28) In section 78 (General elections and bye-elections)—

(a) omit subsections (1) and (2) and substitute—

“(1) There shall be a general election of the Elected Members of the Legislative Council at such time, being not less than six weeks nor more than three months after the date of every dissolution of the Council, as the Governor appoints—

- (a) acting in accordance with the advice of the Chief Minister; or
- (b) acting in his or her discretion, if the office of Chief Minister is vacant or the Chief Minister gives no such advice within seven days after the date of the dissolution.

(2) Subject to subsection (3), whenever any Elected Member vacates his or her seat as a Member of the Legislative Council for any reason other than a dissolution thereof, an election to fill the vacancy shall be held at such time, being not less than six weeks nor more than three months after the date of the vacancy, as the Governor appoints—

- (a) acting in accordance with the advice of the Chief Minister; or
- (b) acting in his or her discretion, if the office of Chief Minister is vacant or the Chief Minister gives no such advice within seven days after the date of the vacancy.”;

(b) in subsection (3), omit “section 76(2)” and substitute “section 76(1)(b)”.

(29) In section 79 (The Clerk of Councils), delete the words “any committee of the Council” and substitute “the Select Committees”.

(30) In section 100 (Annual Estimates)—

- (a) in subsection (1), omit “Financial Secretary” and substitute “Minister responsible for finance”;
- (b) in subsection (2), omit “Financial Secretary” and substitute “Minister responsible for finance”.

(31) In section 101 (Appropriation Bill), omit “Financial Secretary” and substitute “Minister responsible for finance”.

(32) In section 103 (Special Warrants)—

- (a) in subsection (1), omit the first reference to “Financial Secretary” and substitute “Minister responsible for finance”;
- (b) in subsection (2), omit “Financial Secretary” and substitute “Minister responsible for finance”.

(33) In section 104 (Withdrawal Warrants)—

- (a) in subsection (1), omit “Financial Secretary” and substitute “Minister responsible for finance”;
- (b) in subsection (2), omit “Financial Secretary” and substitute “Minister responsible for finance”.

(34) In section 105 (Supplementary Estimates), omit “Financial Secretary” and substitute “Minister responsible for finance”.

(35) In section 109 (Annual statement of accounts), omit subsection (3) and substitute—

“(3) The Financial Secretary shall, as soon as practicable, deliver the audited annual statement of accounts and its attachments received under subsection (2) to the Minister responsible for finance and the Minister shall lay them before the Legislative Council on the next sitting day.”.

(36) After section 109 (Annual statement of accounts), insert—

“Financial Secretary

109A.—(1) There shall be a Financial Secretary, who shall be an officer of the St Helena Public Service.

(2) The Financial Secretary shall be responsible for finance and the principal financial adviser to the Government of St Helena.

(3) The Financial Secretary shall be appointed by the Governor, acting after consultation with the Chief Minister.

(4) In addition to any other functions conferred on the Financial Secretary by or under this Constitution or any other law, the holder of the office shall be responsible for advising the Minister responsible for finance on—

- (a) all matters pertaining to the Estimates;
- (b) the immediate and long-term financial implications of any proposal for the expenditure of public money;
- (c) the future cost of repaying and servicing any loan; and
- (d) the estimated future cost of maintaining an asset created or acquired by any capital expenditure.”.

(37) In section 112 (Borrowing or lending by Government of St Helena), in subsection (4), omit “Financial Secretary” and substitute “Minister responsible for finance”.

(38) In the Schedule to the Constitution (Forms of Oaths and Affirmations), omit paragraph 4 (Oath of confidentiality).

Ceri King
Deputy Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Constitution of St Helena set out in Chapter 1 of the St Helena, Ascension and Tristan da Cunha Constitution Order 2009 (S.I. 2009/1751). The Order makes provision, at the request of the St Helena Government, for a ministerial system of government to be introduced on St Helena to replace the current committee system.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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£6.90

<http://www.legislation.gov.uk/id/uksi/2021/895>

ISBN 978-0-34-822645-4



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