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## EXTRAORDINARY

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### **THE ST HELENA, ASCENSION AND TRISTAN DA CUNHA CONSTITUTION ORDER 2009: SCHEDULE 1, SECTION 49(3)**

#### **Provision made by the Governor for enabling Public Officers to be qualified to be Elected as Elected Members of the Legislative Council**

1. No public officer may stand for election except with the Consent of the Governor and in accordance with one of the Schemes set out in the Schedule below. The Governor's consent will not be given unless the Governor is satisfied that the granting of it would not be detrimental to either the interests of good governance or the effectiveness of the public service.
2. Applications for permission to stand for election to the Legislative Council must be addressed to the Chief Secretary, through Directors and in writing, and must state which of the Schemes set out in the Schedule below they wish to adopt in the event of being elected. Such notice must be received by the Chief Secretary not later than 7 days prior to the close of nominations in the election.
3. A public officer who is granted permission to stand for election shall be allowed to take up to 7 days leave (unpaid if no paid leave is due) during the election campaign; any such leave which is unpaid shall be deemed to have been granted with the approval of the Governor on grounds of public policy in accordance with Regulation 7 of the Pensions Regulations, 2012.
4. The provisions of this Notice will apply to all elections of Councillors until replaced or amended by a further notice.
5. Directors have a duty to ensure that this Notice is brought to the attention of all their staff.
6. This Notice replaces Gazette Notice No. 20 of 24 April 2012.

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**SCHEDULE****SCHEME “A”**

A non-pensionable officer who is not otherwise disqualified by section 49 of the Constitution may stand for election on the basis that, if elected, his or her employment with Government will thereupon terminate and he or she will receive such gratuity (if any) as the Governor finds he or she is entitled to receive.

In such cases, if the candidate is elected:

- (a) he or she shall be deemed to have given notice to terminate his or her employment effective 7 days after the date of the election, but may elect to take paid or unpaid leave during that period;
- (b) any gratuity payable will be paid as soon as is reasonably practicable after the date the resignation takes effect; and
- (c) any accrued leave will be commuted to cash (subject to Income Tax) at the rate of pay prevailing at the date of the election.

**SCHEME “B”**

This Scheme applies in respect of—

- (a) a pensionable officer or a non-pensionable officer; or
- (b) an officer who is not an active member of the Defined Benefits Pension Scheme governed by the Pensions Ordinance 2012, but who receives a contribution into an approved Defined Contribution Pension Scheme under his or her contract of employment.

An officer referred to in paragraph (a) or (b), who is not otherwise disqualified by section 49 of the Constitution, may stand for election on the basis that, if elected, he or she will be released from his or her duties without pay, for the duration of his or her term as a Councillor.

In such cases if the candidate is elected—

- (i) he or she will be released from performance of his or her duties with effect from 7 days after the date of the election, but may elect to take paid or unpaid leave during that period;
  - (ii) on cessation of his or her term as a Councillor, he or she will return to the public service and be assigned to such office or employment as the Governor may consider suitable, at the same grade or level as that prior to election credited with any increment that might be due to him or her as a result of a performance appraisal for work in his or her previous position in the public service; and, with any cost of living increases he or she would have received if he or she had remained in service; and
  - (iii) in the case of—
    - (aa) a pensionable officer or non-pensionable officer, the term as Councillor will be treated as a temporary suspension of employment in the public service in accordance with Regulation 6(1) of the Pensions Regulations 2012. It will **not** in itself count towards pensionable service but service prior to and after the period of temporary suspension will be regarded as continuous service for pension purposes; or
    - (bb) an officer referred to in paragraph (b), the contribution into an approved defined pension contribution scheme under his or her contract of employment will cease temporarily due to the temporary suspension of his or her contract of employment and will recommence upon his or her return to the public service.
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**SCHEME “C”**

An officer, who is not otherwise disqualified by section 49 of the Constitution, may stand for election on the basis that, if elected, he or she will resign from the public service.

In such cases if the candidate is elected—

- (a) he or she shall cease his or her duties, and commence leave of absence pending resignation, 7 days after the date of the election;
- (b) if the officer—
  - (i) holds a pensionable office and is an active member of the Defined Benefits Pension Scheme governed by the Pensions Ordinance 2012, and has completed at least 10 years pensionable service, his or her pension will be preserved until he or she reaches normal retirement age in accordance with Regulation 3 of the Pensions Regulations 2012; or
  - (ii) receives a contribution into an approved Defined Contribution Pension Scheme under his or her contract of employment, this contribution will cease due to the termination of his or her contract of employment.

Dated this 2<sup>nd</sup> day of August 2016

Sean G P Burns  
Acting Governor