



St Helena Government

RULES OF PROCEDURE OF THE EXECUTIVE COUNCIL AND THE DUTIES OF MEMBERS AND THE CLERK OF COUNCILS

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INTRODUCTION

The purpose of this document is to provide a practical guide to the Rules of Procedure of Executive Council and the duties of the Members and the Clerk of Councils.

The document is in two parts, the first part refers to the role of the Governor in exercising the Executive Authority of St Helena on behalf of Her Majesty the Queen and sets out the special responsibilities of the Governor for the conduct of any business of the Government of St Helena. The second part describes the role of the Executive Council in advising the Governor as the highest policy-making body in the Territory and provides guidance on how this should be executed.

These guidelines draw on a number of publications including the St Helena, Ascension and Tristan da Cunha (Constitution) Order, 2009, the Standing Orders of Legislative Council, and the Corporate Governance Guidance for Public Officers (2017). The annexes set out the process and provide templates for producing Council Documents, and sets out the role of the Clerk of Councils in administering Council Business.

This is a working document and as such will be reviewed and updated as felt appropriate by Executive Council.

CHAPTER 1

THE GOVERNOR

1. The Executive Authority of St Helena is vested in Her Majesty the Queen and is exercised by the Governor on Her Majesty's behalf. The Governor may, therefore, exercise his/her powers without enquiry in any Court. The Governor, with the advice and consent of Legislative Council may make laws for the peace, order and good government of St Helena.
2. The Governor is accountable to a Secretary of State for the good governance of the Territory in accordance with the St Helena, Ascension and Tristan da Cunha (Constitution) Order 2009, the laws applicable to the Territory and such instructions as may be given by Her Majesty the Queen through a Secretary of State.
3. Subject to the provisions of Section 43 of the St Helena, Ascension and Tristan da Cunha (Constitution) Order, 2009, the Governor is required to obtain, and act in accordance with, the advice of the Executive Council except in cases of special legal exemptions or in cases of urgency. In respect of the latter the Governor must inform the Executive Council of the measures taken and the reasons therefore.
4. In accordance with Section 44 of the Constitution the Governor has special responsibilities for the conduct of any business of the Government of St Helena, including the general direction and policy control of any Government Directorate with respect to the following matters:
 - (a) defence;
 - (b) external affairs;
 - (c) internal security, including the Police;
 - (d) the appointment of any person to any office in the St Helena Public Service, the suspension, termination of employment, dismissal, or retirement of any officer of the St Helena Public Service or the taking of disciplinary action in respect of such an officer, and the application to any such officer of the terms or conditions of employment of the Public Service (including salary scales, allowances, leave, passages or pensions) for which financial provision has been made;
 - (e) the administration of justice;
 - (f) finance; and
 - (g) shipping.

5. Only the Governor or someone duly authorised in writing by the Governor may make grants and dispositions of land or other immovable property of the Crown – section 31 of the Constitution.
6. In respect of (f) above, although the Governor will continue to have the final responsibility for financial matters, in practice, elected members of the Executive Council are very significantly involved in financial matters through their chairing of Council Committees and participation in Executive Council.
7. In respect of (g) above, it is expected that the Governor will continue to take into consideration the views of the Executive Council regarding shipping policy matters.
8. Power to make appointments to public offices, and to remove and to exercise disciplinary control over persons holding such offices, is vested in the Governor. With the approval of the Secretary of State, the Governor may make appointments to the office of:
 - a. Attorney-General,
 - b. Chief Auditor and
 - c. Chief Justice.
9. The Governor has powers to grant pardon to a convicted person, grant a respite from execution of sentence, substitute a less severe form of punishment or remit the whole or part of any penalty in respect of offences against any law in force in St Helena. The Governor shall exercise these powers after consulting the Advisory Committee on the Prerogative of Mercy that is established in accordance with Section 30 of the Constitution.
10. The Executive Council is normally summoned by the Governor, but if at least two Executive Council Members were to request a meeting of Executive Council, the Governor will do so. Executive Council consists of three *ex officio* members (the Chief Secretary, Financial Secretary and Attorney General) and five Council members, elected by their colleagues at a formal meeting of Legislative Council constituted under Section 36 of the Constitution. The Governor shall, as far as practicable, attend and preside at meetings of Executive Council.
11. Subject to the provisions of Section 43 of the Constitution and the exercise of the Governor's Reserved Powers, the Governor consults the Executive Council in the formulation of policy and the exercise of all powers conferred upon the Governor by the Constitution or any other law, and the Governor acts in accordance with the advice of Council. Thus the reference to decisions being taken by the "Governor-in-Council".

12. The Governor is appointed by Her Majesty the Queen and holds office during Her Majesty's pleasure. In the absence of the Governor the duties of the Governor are performed either by his/her appointment of a Deputy or by an Acting Governor appointed by the Secretary of State.
13. As per section 76 of the Constitution, the Governor shall dissolve the Legislative Council after four years following the inaugural meeting but may also dissolve the Legislative Council at any time.

CHAPTER 2

THE EXECUTIVE COUNCIL

1. The executive authority of St Helena is vested in Her Majesty but is exercised on behalf of Her Majesty by the Governor either directly or through officers subordinate to the Governor.
2. While the Governor retains personal responsibility for certain functions, the Executive Council which advises the Governor in the execution of all other executive powers may be considered in those respects as the highest policy-making body in the Territory.
3. The Executive Council which is established by Section 35 of the St Helena, Ascension and Tristan da Cunha (Constitution) Order, 2009 is charged with the general direction and control of the Government of St Helena in respect of setting strategy, providing the National Policy Framework, approving primary policy when it is cross cutting and/or of national importance, and secondary legislation.

COMPOSITION OF AND APPOINTMENT TO THE EXECUTIVE COUNCIL

4. Membership of the Executive Council is held as follows:
 - a. Five elected Members appointed in accordance with Section 36 of the Constitution.
 - b. The Chief Secretary (ex officio);
 - c. The Financial Secretary (ex officio); and
 - d. The Attorney-General (ex officio);
5. If a member of Executive Council is incapable of taking part in the proceedings of the Council, e.g. through absence or illness, the Governor in his/her discretion may appoint a Temporary Member to discharge that Member's functions.
6. Ex officio Members do not have a vote.
7. The function of the Executive Council is to advise the Governor and so far as is practicable, the Governor attends and presides at meetings of the Executive Council.
8. In the Governor's absence and in his/her discretion, the Governor may appoint any member of the Executive Council to preside at any meeting.

9. Subject to Section 39 of the Constitution, no business except that of adjournment shall be transacted at any meeting of the Executive Council if objection is made by any Member present that there are less than three elected Members excluding the Governor, or other person presiding in the Governor's absence.
10. In the absence of a member of Executive Council, section 39 of the St Helena Constitution Order 2009 provides for participation in Executive Council meetings by Members who are not physically present. This can be facilitated via Skype or other suitable technology. Such participation is acceptable provided that the number of members that need to be physically present is met and that the person presiding is satisfied they can all communicate effectively. This section further provides that no decision of the Council shall be taken unless the person presiding is satisfied that the manner of communication allows all those taking part to hear and be heard and that they all have seen any documents relevant to the proposed decision.

COUNCIL COMMITTEE AND DIRECTORATE RESPONSIBILITY

11. The Executive Council does not in practice take decisions on every issue within Government. Many decisions are taken by the Council Committees. Under Section 56 of the Constitution, Members of Legislative Council are nominated by their colleagues for the Governor to appoint as Chairmen of Council Committees to deal with and take responsibility for these portions of the business of the Council i.e.:
 - a. Approval of secondary policy;
 - b. Monitoring and scrutiny of the performance of Directorates; and
 - c. Allocating strategic budgets.
12. This responsibility, together with the necessity to uphold the principle of collective responsibility and to preserve unity, makes it incumbent upon the Chairman of a Council Committee to submit to Executive Council:
 - a. Memoranda and papers on subjects within his portfolio responsibility which raise contentious or wider issues or where the Chairman is uncertain of the wider policy framework of the Government;
 - b. Matters which by law must be presented before that body.
13. The Chairmen of Council Committees and officials should, therefore, ensure that cross cutting policy matters and policy matters of national importance are referred to the Executive Council.
14. The Executive Council should not be subjected to trivial or routine matters.

OATHS OR AFFIRMATIONS

15. Members of Executive Council take the Oath of Allegiance and an Oath of confidentiality. In a move towards increasing openness and transparency Authority has, however, been given by the Governor in respect of the operation of the oath of confidentiality. A copy of the relevant Authority is at **Annex A**.

THE BUSINESS OF EXECUTIVE COUNCIL

16. Business before the Executive Council should be conducted in two parts:

- a. Items that are not of a confidential nature can be discussed publicly and items that are deemed confidential are discussed in camera.
- b. Opinions of individual Members in discussions and decisions of the Council in camera should not be divulged, under any circumstances whatsoever without the permission of the Governor.
- c. Members of Legislative Council who are not members of Executive Council are not members of the executive arm of Government. Therefore information given to them may, on occasions, have to be limited.

17. Continuation of the Doctrine of Confidentiality:

- a. The doctrine of confidentiality continues to be binding on a Member after his resignation or after the dissolution of a Government.
- b. If a Member resigns and, in stating his reasons therefore, wishes to refer to discussions in council, he must first obtain the consent of the Governor before any such reference.

18. Disclosure of Facts for Official Business:

- a. There must be no disclosure of the facts stated in Council documents or proceedings save to those who need to know these facts in the course of their official duties or as part of an approved press release.
- b. Such facts should be communicated only when they must be known for the execution of official business.

19. Summoning of Regular Meetings:

- a. The Clerk of Councils takes the Governor's instructions on the Agenda and the calling of meetings.

- b. The Governor may summon any person to a meeting of the Council when in her/his opinion the business before Council renders the presence of that person desirable. If a member wishes any official to be present at any discussions on a particular matter in Executive Council, a request should be made to the Clerk of Councils. This request should be passed to the Governor for a decision. The Officials will normally withdraw from the meeting before the Council takes its decisions on the matter if the item has been listed as a 'closed' agenda item.

20. Proceedings of the Council Meeting:

- a. Proceedings of Executive Council are not subject to the rules of debate as set out in Standing Orders of the Legislative Council.
- b. Unless consent for the consideration of additional items is obtained from the Governor or member presiding, then discussion will be limited to the items on the Agenda.
- c. Notice of matters for decision must be given by the submission of a memorandum in accordance with the Executive Council memorandum drafting procedure.
- d. The member putting forward the memorandum is expected to lead the discussion except in his/her absence, when s/he may ask one of their colleagues to deputise for the absent Member.

21. Any Other Business:

- a. "Any Other Business" can lead to wide-ranging discussion and lack of precision. It is important that the deliberations of Executive Council should be based on carefully prepared Executive Council Memoranda, and for this reason AOB items should not be used to raise substantive matters not on the Agenda.
- b. In an emergency or in exceptional circumstances, a Member wishing to raise a policy matter orally should inform the Governor as soon as possible. The Executive Council would not normally be expected to make a decision on policy on a subject raised orally.

22. Notice and Agenda:

- a. The Executive Council will normally meet bi-weekly (on Tuesday at 9:30am) in the Council Chamber. However, Executive Council may meet at any other venue or at any other day or time of day as the Governor may determine following consultation with Members.
- b. As a general rule, papers for a Tuesday meeting will be made available to Members for study on the previous Wednesday.

- c. Memoranda for Council's consideration should be received by the Clerk of Councils not later than 2 weeks before the date of the meeting in order to check, clear and distribute papers on the previous Wednesday afternoon before the Tuesday when the Executive Council meets.
- d. Memoranda not received in time will have to wait for a later meeting. The agenda will be closed at noon on the Wednesday prior to the meeting.
- e. Elected Members of the Executive Council may wish to nominate one of their numbers to discuss with the Governor the emerging agenda for the Executive Council meetings.
- f. A Member must make a personal approach to the Governor through the Clerk of Councils if he/she wishes to propose an amendment to the Agenda.
- g. The notice and Agenda of a meeting will be circulated by the Clerk of Councils on the Wednesday prior to the meeting.
- h. In finalising the Agenda with the Clerk of Councils, the Governor will suggest which items should be recorded for later broadcast, in accordance with the Protocol for Recording Open Executive Council and Council Committee meetings. The Agenda will indicate items which are to be recorded. A copy of the Protocol is at annex E.
- i. The Governor may call informal meetings of Executive Council at his/her discretion but discussions at such meetings should not involve the provision of advice to the Governor on matters which need to set out formally in Memoranda and included as agenda items for Executive Council meetings.

23. Identification of Items on the Agenda:

- a. Under each item for discussion the agenda will quote:
 - i. the serial number of the memorandum;
 - ii. the subject matter;
 - iii. the member responsible for the subject matter; and
 - iv. items which are for discussion in the open or closed sessions of the meeting.

- b. If a memorandum covering subjects on the Agenda is not available for circulation with the Agenda, it will be given in advance, through consultation with the Clerk of Councils, a reference number which will be annotated "To be Circulated".
- c. The Governor may at any time call for any official paper or seek any official information or advice available to the Elected Members

24. Submission of memoranda to the Council:

- a. The initiating Directorate will take action as follows:
 - i. In preparing any submission to Executive Council, the Directorate is responsible for seeing that all interested parties (eg Finance, Legal, Environmental and other Directorates involved) have been consulted and their views included in the final draft, as well as making certain that clear recommendations are being placed before the Council.
 - ii. Memoranda should be drafted using the agreed template and finalised in accordance with the agreed Executive Council Memo Process as set out at **Annex B**.
 - iii. The memorandum, after being accepted and agreed by the Committee where necessary, should be sent to the Clerk of Councils for action.
- b. The Clerk of Councils will take action as set out in the Executive Council Document Process, which includes:
 - i. Reading the draft memorandum to ensure that all sections have been completed, proper consultation has been made and clear recommendations set out (see template at Annex B);
 - ii. If necessary the Clerk will refer the memorandum to the Directorate concerned stating the reason why it cannot be accepted. If in doubt, the Clerk must refer the matter to the Chief Secretary;
 - iii. Arranging for the numbering and recording of the memorandum in the Register, and for its reproduction;
 - iv. Giving that draft memorandum a number;
 - v. Ensuring that attachments are complete and labelled correctly, cross referencing the memorandum;

- vi. Check whether the Memorandum is for open or closed session discussion and ensure 'Confidential' markings are removed from open session discussion Memoranda;
- vii. Seek final approval of the Governor for inclusion of those Memoranda intended for discussion in the open session Agenda;
- viii. Place on the Agenda;
- ix. Circulate the memorandum to the Members of Executive Council;
- x. Liaise with the SHG Press Office about publicity of the open session of the meeting and provide copies of the open agenda documents for posting on the SHG website;
- xi. Further details on the responsibilities of the Clerk are at **Annex D**.

COUNCIL DOCUMENTS

- 25. It is good practice for most issues, recommendations and decision to be set out in clear, concise papers; hence the focus of this section on council documents.
- 26. However, the Executive Council may also accept additional information by way of oral presentations and PowerPoint presentations. A video clip might be a reasonable substitute for a site visit. An appropriate expert or facilitator could be invited to the Council meeting. The important determinant should be consideration of how the most effective participation and involvement of the Executive Council can be secured.
- 27. Further advice on council documents is at **Annex E**.

ACTION ON DECISIONS OF THE EXECUTIVE COUNCIL

- 28. Decisions of Executive Council are recorded by the Clerk in the Minutes.
- 29. The Clerk must record in the Minutes only the essence of the discussion or the decision and not refer to opinions expressed by Members.
- 30. One would not expect all Elected Members or Senior Officials to agree on everything, but leadership requires consensus to achieve and then togetherness to deliver the agreed objectives. The commitment to respecting the principles of democracy and the rule of the majority is clearly set out in the preamble to the 2009 Constitution of St Helena, Ascension and Tristan da Cunha. Collective responsibility is important and has been accepted by SHG as a way of working for some years. This means, for example, that once a

decision is taken in Executive Council, Members (both elected and officials) should support it regardless of their personal views. This does not prevent full and frank debates but ensures that once a decision is made, all of Government works towards achieving it.

31. The principle of 'Collective Responsibility' is adopted by the Executive Council and any Member dissenting to a majority view of other Members is bound to uphold the principle of collective responsibility in the decision making process. Individual Members' disagreement with a decision will not be recorded in the Minutes.
32. Draft minutes are issued to Members of the Council within 3 days after the meeting for comments and suggestions as to amendments.
33. Where appropriate, extracts from the minutes are e-mailed as soon as possible after a Council meeting, to the Head of the relevant Directorate, and when appropriate will be endorsed "Council advised and the Governor agreed that.....".
34. The Head of Directorate will be responsible for the follow up action arising out of these decisions.
35. When the actual words of the decisions are being used verbatim these words should be quoted in inverted commas.
36. Reference numbers of Executive Council papers must never be used on any other documents.
37. The decision will normally be conveyed as a direction of the Governor in Council by the Clerk of Councils whose responsibility it is to deal with **all** correspondence to and from the Executive Council.
38. Major Variation of Decisions:
 - a. The Council may be asked to reconsider a decision previously made if the Governor or a Chairman of a Council Committee finds it impracticable to implement the decision; or
 - b. if the circumstances have changed and the decision has become difficult or undesirable to implement.
39. Minor Variations of Decisions:
 - a. The Chairman of a Council Committee should inform the Governor through the Clerk of Councils of the nature of the variation suggested and take instructions on whether to go ahead or to go back to Executive Council.

ACCESS TO COUNCIL DOCUMENTS

40. On the change of Government a Member of Executive Council may, with the permission of the Governor, be given copies of decisions on subjects considered before their time in office if knowledge of such decisions is necessary for the discharge of current business.
41. Members of Executive Council are not entitled, as of right, to see the memoranda put to the Executive Council or the minutes of meetings of the Council held when he/she was not a member. However, un-numbered, white copies of Memoranda, Minutes and other documentation relating to decisions made prior to them holding office can be made available when decisions are to be reviewed. In the event that Members of Executive Council are of the view that a decision of a previous Executive Council should be reneged, due process must be followed in that a Memorandum must be prepared, tabled as Executive Council business and the decision recorded in the Minutes. Such documentation may also be provided upon request for any matter which a previous Executive Council has made a decision on.
42. Application to have access to such documents should be made to the Clerk of Councils, giving details of the papers required.

ABSENCE FROM MEETINGS

43. The first duty of members of the Executive Council is to participate fully in the discussions and decision-making of the Council.
44. Absence from Meetings:
 - a. Council meetings take precedence over all other meetings. If, for unavoidable reasons, a Member is unable to attend a Council meeting, he /she should give notice to the Clerk of Councils as early as possible.
45. Absence from the Territory:
 - a. Members who wish to be absent from duty or go abroad should inform the Governor, who, following consultation or recommendation from the Member who will be absent, may appoint a Temporary Member in accordance with Section 35(2) of the Constitution.

EXECUTIVE COUNCIL: ANY OTHER BUSINESS

46. Meetings of the Executive Council should be productive and of reasonable length. 'Matters Arising' and 'Any Other Business' should not take an

inordinate amount of time. Set out below is a suggested checklist which could guide Any Other Business and make it more focused and less time consuming.

a. Any Other Business should be:

- i. of corporate policy interest;
- ii. brief items to inform Executive Council colleagues of breaking news or imminent developments;
- iii. suggestions for future agenda items with reference to the Executive Council Rolling Programme;
- iv. a last resort to highlight an issue when other means have been exhausted; or
- v. a means of Executive Council Members making the corporate body aware of concerns being expressed about Executive Council decisions.

b. Any other Business should **not** be:

- i. issues which are the responsibility of a particular Executive Council member;
- ii. a means of chasing replies from other members;
- iii. matters which could be resolved by a telephone call or other approach to the responsible official;
- iv. complex issues (particularly those with financial implications) which require a decision;
- v. a re-visiting of previous Executive Council decisions;
- vi. a release valve for a frustration that has been encountered;
- vii. matters that should more appropriately be dealt with as an Executive Council agenda item; or
- viii. matters in which the Executive Council Member may have a vested interest

REPRODUCTION OF MEMORANDA

47. Documents initialled for submission to the Council are the property of the Council and may not be reproduced in any Directorate or Government office. This does not apply to “attachments” which are reproduced by the originating office.

48. Authority for the reproduction of Executive Council documents lies with the Clerk of Councils. Application for additional copies for a document must be made in every case to the Clerk of Councils. If permission is granted the original draft memorandum is retained in the Council records.

49. Memoranda for the open agenda should be posted on the SHG website with hard copies being made available on request; these copies will not be numbered and will be printed on white paper

INFORMATION PAPERS

50. Members of Executive Council will, from time to time, wish to keep their colleagues informed on the matters of importance that do not require a decision by the Executive Council. In such cases "Information Papers" may be prepared and circulated to Members in the same manner as memoranda. Information papers will be issued from the office of the Clerk of Councils, and will be recorded at the end of the Agenda for the next meeting of Council.
51. An Information Paper will not be discussed unless a Member, in an exceptional case, specifically requests that it be formally considered by Council.

RESTRICTED MEMORANDA

52. Where any member of the Executive Council considers that a paper should have restricted circulation, he or she may apply to the Governor first, and the Governor may in his or her discretion order restriction.
53. Such memoranda should receive special treatment to ensure that at no time should the paper be available to persons other than members of the Executive Council. The Governor may also decide that the Memoranda should be returned to the Clerk to ensure safe keeping and/or destruction of Members' after they have been discussed.
54. The treatment of a Restricted Memorandum is as follows:
- a. A memorandum of this nature will be placed on a special "restricted" Council e-file which will be opened and registered by the Clerk of Councils. All action will be carried on through this file and one hard copy only will be kept securely by the Clerk of Councils;
 - b. If the decision involves action which will be known by the public or which requires further correspondence in public offices, edited versions will be prepared by the Clerk of Councils for the Department's file.

EXECUTIVE COUNCIL SITTING AS THE PLANNING AUTHORITY

55. Section 23 of the Land Planning and Development Control Ordinance, 2013 sets out the role of Executive Council when required to sit as the Planning Authority in order to consider applications for development permission. Such application must not be considered before comments or representation from the Land Development Control Authority have been received.

56. When sitting as the Planning Authority, Executive Council is not expected to consider any financial implications associated with an application for development permission.

CODE OF CONDUCT FOR MEMBERS OF THE LEGISLATIVE COUNCIL

57. A copy of the Code of Conduct for Members of the St Helena Legislative Council is attached at **Annex G** for ease of reference.

ANNEX A

AUTHORITY OF HE THE GOVERNOR IN RESPECT OF THE OPERATION OF THE OATH OF CONFIDENTIALITY

I, Lisa Phillips, Governor of St Helena hereby issue this authority to the Members of the Legislative Council in relation to the operation of the oath of confidentiality:

1. Whereas section 54 of the Constitution for St Helena, Ascension and Tristan da Cunha states that:

No Member of the Legislative Council shall enter upon the functions of his or her office unless he or she has made before the Governor, or some other person authorized for that purpose by the Governor, acting in his or her discretion, oaths or affirmations of allegiance, of confidentiality and for the due execution of his or her office in the forms set out in the Schedule.”

2. And whereas the Oath of Confidentiality as set out in the aforementioned schedule provides that it must be made in the following terms:

“I do swear that I will be a true and faithful Councillor and that I will not, directly or indirectly, except with the authority of the Governor, reveal the business or proceedings of the Government of St Helena or the nature or contents of any document communicated to me, or any matter coming to my knowledge, in my capacity as a Councillor. So help me God.”

I, therefore give my authority for Councillors to reveal the business or proceedings of the Government of St Helena and the nature and contents of any document communicated to Councillors within the following boundaries:

No express authority is required for the following:

1. Ongoing work done by the Councillors (eg. contact with the Administration over issues raised by the public; progress/timing in considering new policies)
2. Rationale behind decisions taken (eg. budget allocations)
3. Use of analysis carried out by the Administration which underpins a discussion taking place with the public (eg. data from elsewhere about wearing of seatbelts)

4. Information already in the public domain (eg. press releases, radio appearances, speeches, responses to the Code of Practice on the release of information etc.)
5. Matters discussed in the open sessions of Executive Council or Council Committees

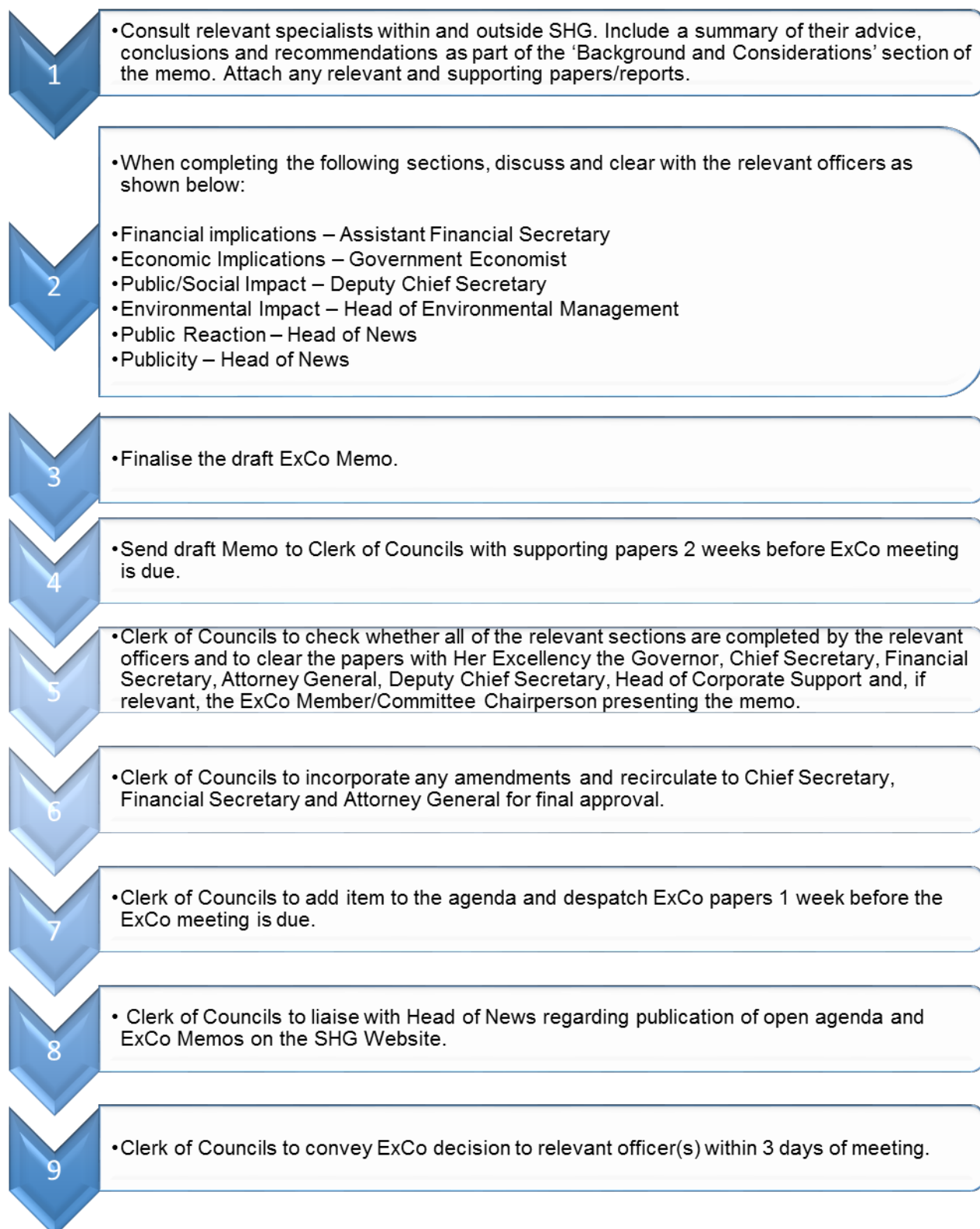
Express authority is required for the following:

- a. ongoing discussions / negotiations with HMG (which are not concluded);
- b. information that is owned by a third party and whose permission to disclose has not been obtained;
- c. information that is deemed confidential or sensitive (eg. information about an individual);
- d. information that is commercial in confidence (eg. information about a business proposal or the contents of a contract etc.)
- e. Executive Council 'green papers' (but please note that Councillors can draw on information contained therein as appropriate).

If in doubt, Members can obtain advice from Attorney General's chambers.

Lisa Phillips
Governor

EXECUTIVE COUNCIL MEMORANDUM PROCESS



ANNEX C

Copy No: *(to be completed by the Clerk of Councils)*

No: *(to be completed by the Clerk of Councils)*

	Memorandum for Executive Council		
SUBJECT	<i>(insert subject matter)</i>		
	<u>Memorandum by <i>(this has to be the position of the person presenting the paper, ie one of the ex officio members of Executive Councillor one of the elected members of Executive Council in their capacity as Chairman of one of the five Council Committees)</i></u>		
ADVICE SOUGHT	<p>A clear statement has to be inserted here as to what is being asked of Council. Example: “Council is asked to consider and advise whether the minimum wage rates as recommended by the Employment Rights Committee, should be introduced on St Helena and if so, the date on which these rates should be introduced.”</p>		
BACKGROUND & CONSIDERATIONS	<p>This section should provide a full account of the background and considerations that has given rise to the submission to Council. It should make reference to discussions that might have been had already and should draw attention to other relevant documents and, where necessary copies of documents should be attached.</p> <p>Example: The Employment Rights Ordinance, 2010 (ERO) makes provision for employment and rights of employees and creates a framework for the enforcement of such rights. Sections 7 – 10 of the ERO were brought into force on 1 August 2012. This enabled the appointment of an Employment Rights Committee to make recommendations to the Governor in Council concerning the determination of a minimum wage rate for St Helena. The Committee was appointed by the Governor in August 2012 in accordance with Section 7 of the ERO and the Committee’s report is attached.</p> <p>2. The Committee has recommended that there shall be two rates as follows:</p> <p>(a) A single rate of £2.30 per hour for all workers having attained the age of 18 years; and,</p>		

	<p>(b) A single rate of £1.45 per hour for all young people having attained the age of 16 and 17 years.</p> <p>3. The rationale and basis for this recommendation are set out in the Committee's report and supporting reports (also attached) - "Minimum Wage 2012- Report for the Employment Rights Committee by Ann Muir" and the "Economic Impact of introducing a minimum wage on St Helena".</p> <p>4. If Council is minded to approve the recommendation, it should be noted that the relevant sections in the ERO will need to be brought into force before the minimum wage rates can be legally introduced. In this regard, it would be prudent to give all employers adequate notice of any proposed/agreed effective date.</p>
FINANCIAL IMPLICATIONS	<p>This section should set out any financial implications that will be incurred as a result of the decision being sought. This should include implications for SHG and other stakeholders including both positive and negative. Where possible, the financial impact should be quantified.</p> <p><i>Example: -The financial impact of introducing a minimum wage rate of £2.30 on both public and private sectors are set out in the attached report "Economic Impact of introducing a minimum wage on St Helena". In brief, the private sector would incur estimated additional expenditure of £70,000 pa if existing pay differentials are not maintained; and, the public sector would incur estimated additional expenditure of £15,000 pa if existing pay differentials are not maintained. But attention is drawn to the relevant sections in the report regarding the most likely "ripple effect" of introducing a minimum wage where differentials are maintained at the lower end of the wage bracket. Here, the private sector would incur additional estimated expenditure of £200,000 in the lower salary bands; and, SHG some additional estimated expenditure of £40,000. The report gives further predictions on financial implications for both private and public sectors if all existing differentials are maintained but these are of course much greater.</i></p> <p>7. The report states that it is very unlikely that there will be any increases in tax revenue but that there may be losses due to reduced profit. This is because the tax free allowance is currently set at £7k per annum and corporation tax may reduce as some companies may see a reduction in profit depending on how they respond to the introduction of a minimum wage.</p> <p>Where there is no financial implication/impact, then a brief statement to this effect should be made.</p> <p>This section should be completed as far as possible by the author but should then be cleared with the Assistant Financial Secretary before submission of completed draft to the Clerk of Councils.</p>
ECONOMIC	<p>This section should cover the wider economic implications for the Island.</p>

IMPLICATIONS	<p>It should state whether the advice being sought will lend itself to improvements in the economy or whether there is likely to be adverse impact. An explanation should be provided for either scenario. In some cases it might be necessary to provide a separate report to attach to the memorandum as was the case for the example (minimum wage) being used in this template</p> <p>Where there are no economic implications/impacts, then a brief statement to this effect should be made.</p> <p>The author could attempt to complete this section but it should in any case be cleared with the Economist in Corporate Policy and Planning before submission of completed draft to the Clerk of Councils.</p>
CONSISTENCY WITH INVESTMENT POLICY PRINCIPLES	<p>This section should state whether the decision is consistent (or otherwise) with the Investment Policy Principles. The Investment Policy can be found on the SHG Sharepoint. For ease of reference, there are five policy principles:</p> <ol style="list-style-type: none"> <i>1. Make Saint Helena a desirable and competitive destination to do business by removing barriers to investment.</i> <i>2. Support an economy which is accessible to all potential investors and promote investments across the economy.</i> <i>3. Support the locally based private sector to compete in an open economy but, where possible, avoid being overly protective.</i> <i>4. Promote fair, consistent, timely and transparent decision making.</i> <i>5. Encourage growth through import substitution, export promotion and domestic production.</i> <p>This section should be completed by the author before submission of completed draft to the Clerk of Councils.</p>
PUBLIC / SOCIAL IMPACT	<p>This section should describe the social impact which the decision will have on the public/stakeholder and/or specific interest groups.</p> <p><i>Example: The introduction of the recommended minimum wage rates should have a positive public/social impact in that it seeks to protect the interests of the lowest paid on St Helena.</i></p> <p>In some cases where there are significant policy changes or introduction of a new policy, it might be necessary for a social impact assessment to be undertaken by the Assistant Chief Secretary (Performance).</p> <p>The author could attempt to complete this section but in any case it must be cleared with the Assistant Chief Secretary (Performance) in Corporate Policy and Planning before submission of completed draft to the Clerk of Councils.</p>
ENVIRONMENTAL IMPACT	<p>This section should state how the environment will be affected by the decision being sought. In some cases, it will be necessary for an environmental impact assessment to be undertaken by the Head of</p>

	<p>Environmental Management, but again much will depend on the subject matter.</p> <p>Where there is no environmental impact then a brief statement to this effect should be made.</p> <p>The author could attempt to complete this section but in any case it must be cleared with the Head of Environmental Management in the Environment and Natural Resources Directorate before submission of completed draft to the Clerk of Councils.</p>
PREVIOUS CONSULTATION / COMMITTEE INPUT	<p>This section should give an account of any prior consultation and discussion, including in particular consultation with the public, stakeholder and interest groups and with any of the five Council Committees.</p>
PUBLIC REACTION	<p>This section should describe how the public is likely to react to the decision being sought.</p> <p><i>Example: There is likely to be majority public support especially from those who are currently being paid less than the proposed rate.</i></p> <p>The author should attempt to complete this section but should clear with the Chief Public Relations Officer before submission of draft to Clerk of Councils.</p>
PUBLICITY	<p>This section should state what publicity will be given once the decision has been made. Depending on the subject matter it might be necessary to have a communications strategy in place in which case an outline of that strategy should be included.</p> <p>In completing this section, the author should clear with the Chief Public Relations Officer before submission of the draft to the Clerk of Councils.</p>
SUPPORT TO STRATEGIC OBJECTIVES	<p>Include the relevant National Goal, and objective where possible, as set out in the 10 Year Plan, which the paper will support.</p> <p><i>Example: This paper supports the following National Goal / Objective:</i></p> <ul style="list-style-type: none"> • <i>Altogether Wealthier: We will raise the minimum wage and have a living wage for the island.</i>

LINK TO SUSTAINABLE ECONOMIC DEVELOPMENT PLAN GOALS	<p>Where appropriate, state the relevant goal as set out in the Sustainable Economic Development Plan 2018- 2028. The SEDP can be found on the SHG website and SHG Sharepoint. The goals are listed on page 6 of the Plan.</p> <p>Example: This paper is linked to the following SEDP Goal:</p> <p><i>“1. Increase Exports - Selling goods made, grown or caught in St Helena to markets abroad and people from abroad increases the amount of money entering St Helena, which can help raise standards of living.</i></p>
	<p style="text-align: right;">INITIALS OF PRESENTER</p> <p style="text-align: right;"><i>Example: DLR</i></p>
OPEN /CLOSED AGENDA ITEM	<p>Delete as appropriate bearing in mind that Executive Council has stated that it will operate on a presumption of openness. Where there is reason for a closed agenda item, please state reasons for the same.</p> <p><i>Examples: This paper is for the closed session as it relates to an individual/contains commercial in confidence information/will have national security implications if the information is released.</i></p> <p>There will no doubt be other reasons why a specific matter cannot be discussed in the open session but whatever the reason, please give a brief explanation.</p>
Corporate Support Corporate Services	
DATE OF MEMO eg 4th April 2019	

DUTIES OF CLERK TO THE EXECUTIVE COUNCIL

1. The Clerk of the Council is charged with the preparation necessary for Council Meetings:
 - a. To consult the Governor (through the Chief Secretary) in the preparation of the Agenda for Council meetings;
 - b. To ensure that the Agenda and all relevant papers are circulated to Members of Executive Council in accordance with the Executive Council Memoranda process;
 - c. To examine all memoranda submitted for presentation to the Council to ensure that they conform to the accepted form and are accompanied by the necessary documentation, and to refer to the Governor when necessary;
 - d. To ensure that reference papers and documents are ready to hand.
2. During the Meeting, the role of the Clerk of Councils is:
 - a. To record the decisions of the Council;
 - b. To provide the necessary reference documents as needed.
3. After the Meeting, the Clerk of Councils:
 - a. Must convey the decisions of Executive Council to the appropriate person or Directorates which will initiate action on them;
 - b. Must take steps leading to the coordination of the work of the Directorate which arises from the submission to Executive Council or which results from the Council's decision;
 - c. Must record follow-up action on all decisions taken by Executive Council.
4. The Clerk of Councils also has the following general responsibilities:
 - a. To maintain the Executive Council Tracker document of all decisions which require further action before being reconsidered by Executive Council or which include an invitation to a Member to submit a memorandum;
 - b. To ensure that all arrangements for the security and confidentiality of Council documents and business are adequate;
 - c. To ensure and record the return of all Council documents by elected Members when they cease to be Members of the Executive Council;

- d. To record properly all decisions and maintain all documents and records for the efficient conduct of Council business;
- e. To certify under his/her hand all subsidiary legislation including rules, orders, regulations and proclamations made by the Governor when the Governor had acted in accordance with the advice of Executive Council or when the Governor has acted in his own discretion.

COUNCIL DOCUMENTS

1. Type of Documents

The main documents presented to Executive Council are:

- Memoranda – submitting questions for decision or giving information likely to lead to discussion, normally printed on green paper
- Agenda – listing the business to be considered at the meeting, normally printed on white paper
- Minutes – recording proceedings and decisions, normally printed on gold paper
- Information papers – providing information for members although the subject matters is not intended for debate or decision

The abovementioned documents are all the property of the Council and the Clerk should ensure that their contents are no divulged to unauthorised persons.

2. Security of documents

- All Memoranda to contain the following foot note on each page:

“This document is the property of the St Helena Government; it is protected by copyright laws and the Official Secrets Act. The unauthorised possession or copying of the document may result in civil or criminal penalties.”
- All copies are to be numbered, each Member of the Council and each authorised official having his/her own number. This also applies to Members of the Legislative Council who are not Executive Council members
- The Clerk records the issue of documents to each member of the Council and to each authorised person
- It is the duty of members of the Council and all officials in SHG Directorates who handle Council confidential Memoranda and other documentation to ensure that such documents are safely locked away when not in use and the electronic versions of such documents cannot be accessed by unauthorised individuals
- Documents no longer in use must be returned to the Clerk of Councils and destroyed. The return of these documents must be recorded.

- All confidential Council documents must be returned to the Clerk of Councils by a Member upon resignation or upon ceasing to be a Member of the Executive Council

FORM OF MEMORANDA

All Executive Council Memoranda must be in the format shown at Annex C above.

PROTOCOL FOR RECORDING OPEN EXECUTIVE COUNCIL AND COMMITTEE MEETINGS

In Executive Council's ongoing commitment to being more open and transparent, Members have agreed for open sessions of Executive Council and Council Committee meetings to be recorded and made available to the public.

St Helena Government (SHG) supports the rights of members of the media and public to record and report on open meetings subject to the below protocol being followed.

1. Definition

For the purposes of this document, recording is defined as writing, audio recording, filming, photography, reporting via Social Media (tweeting, blogging) or any other channel that allows those not physically present at the meeting to follow the discussion, whether it be at the time of the meeting or afterwards.

2. Audio Recordings

Audio recording of meetings are made to improve accessibility to meetings and to provide greater clarity on how decisions are reached. While an audio recording may be produced, the minutes of the meeting are still the formal legal record of that meeting and council/committee decisions.

3. Audio Recording by SHG

SHG may record or report on meetings itself, and when doing so will be bound by this protocol. SHG can retain, use or dispose of such material in accordance with its information management and disposal policies. Councillors who wish to record or report on the proceedings of a meeting will also be bound by this protocol.

When recording open sessions of Executive Council meetings via the central microphone system in the Council Chamber. Elected Members should speak clearly into the microphone at all times. Other speakers will also be required to speak clearly into the microphone provided.

Due to the nature of technical equipment and support SHG cannot guarantee that audio recordings will be continuous or fault-free.

4. General

- As a matter of courtesy, any member of the media intending to record an open session of an Executive Council meeting is asked to please inform the Clerk of Councils at the earliest possible opportunity to enable adequate facilities to be put in place. If intending to record an open session of a Council Committee meeting, the

secretary of the relevant Committee should be notified, again at the earliest possible opportunity for the same reasons

- Before the meeting begins, all attendees will be notified that recording of the meeting may be taking place. This will be noted on the agenda, on signage and by the Chairperson at the start of the meeting
- Those attending meetings must be made aware that filming, recording or broadcasting is taking place, covert filming, recording or broadcasting is prohibited.
- The right to record at an Executive Council or Council Committee meeting is limited to the duration of Open Sessions only. Therefore, recording must not start until the meeting is called to order, and must cease when the Chairperson brings the Open Session to a close
- If it is resolved to exclude members of the public from the meeting then all recording equipment, not belonging to SHG must be removed from the meeting room or otherwise be switched off.
- Members of the media recording a meeting must not at any time leave recording equipment unattended
- In order to avoid disruption, those recording, and in particular those filming the meeting, will be required to do so from one fixed point
- If a member of the media is considered by the Chairperson to be obstructing or disrupting discussion, they may be asked to cease recording or reporting and/or be excluded from the meeting.
- Recordings must not be edited in a way that could lead to misinterpretation of the proceedings and this includes editing an image or views which may ridicule, or show lack of respect towards those being filmed or recorded.
- SHG will not be responsible for material recorded or published by any other person.
- A notice will be placed outside each meeting room advising members of the public that the meeting is being recorded.

5. Storage of recordings

- Open Sessions of Executive Council meetings will be recorded via the central microphone system in the Council Chamber and will be saved from the system onto the central SHG file structure in MP3 or WAV format
- A digital back-up of audio recordings will be kept on the central SHG file structure in a secured folder so that only authorised persons can access them. This will be an unedited raw version of what the microphones pick up at the meeting and will only be used in the case of internal scrutiny and as a back-up facility in case of technical

issues. It will not be made available to the public or media unless SHG agrees to release the recording.

- Copies of recordings of Open Session Executive Council Meetings will be uploaded to the relevant page of the SHG website in MP3 or WAV format – no transcripts will be provided other than in exceptional circumstances where a person may be unable to hear an audio recording
- Audio recordings will be stored until the Minutes of the relevant meeting have been confirmed.

SHG
July 2018

ST HELENA



THE ST. HELENA, ASCENSION AND TRISTAN DA CUNHA CONSTITUTION ORDER
2009

(Section 71)

CODE OF CONDUCT FOR MEMBERS OF LEGISLATIVE COUNCIL

Approved by Resolution of the Legislative Council on the day of 2018 and supersedes all previous versions of the Code of Conduct.

1. Preliminary

This Code of Conduct is approved by the Legislative Council to provide guidance to Members as to standards of conduct expected of them in the discharge of their duties as members of the Legislative Council. All Members of the Legislative Council are required to comply with the provisions of the Code, and are subject to its disciplinary provisions.

2. Interpretation

2.1 In the Code—

“**Code**” means this Code;

“**Council**” means the Legislative Council;

“**Meeting**” means a meeting of the Council, and includes (where the context so admits) a meeting of a Council Committee, the Executive Council, or the Public Accounts Committee;

“**Member**” means a Member of the Council and “**Elected Member**” means an Elected Member of the Council;

“**Speaker**” includes the Deputy Speaker whenever the Speaker is absent or unable to act, or has a conflict of interest, or specifically delegates a function to the Deputy Speaker.

2.2 For the avoidance of doubt, the Members of the Council, as provided in section 48 of the Constitution, are the Speaker, the Deputy Speaker, the Chief Secretary, the Financial Secretary, the Attorney General, and the 12 Elected Members.

3. Purpose and scope of Code

- 3.1 The purpose of the Code is—
- (a) to establish the standards and principles of conduct expected of all Members in undertaking their duties;
 - (b) to set the rules of conduct which underpin these standards and principles and to which all Members must adhere; and in so doing
 - (c) to ensure public confidence in the standards expected of all Members and in the commitment of the Council to upholding these rules.
- 3.2 The Code applies to Members in all aspects of their public life. It does not seek to regulate what Members do in their purely private and personal lives.
- 3.3 The obligations set out in the Code are complementary to those which apply to all Members by virtue of the procedural and other Rules of the Council and the rulings of the Chair.

4. General Principles of Conduct

- 4.1 In carrying out their duties, Members will be expected to observe the following general principles of conduct. These principles will be taken into account when considering the investigation and determination of any allegations of breaches of the rules of conduct under Paragraph 7.

(a) Selflessness

Members should take decisions solely in terms of the public interests.

(b) Integrity

Members should not place themselves under any financial or other obligation to individuals or organisations that might influence them in the performance of their official duties. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family or friends, or their business colleagues; or to secure special treatment for any voluntary or charitable organisation with which they are involved. They must declare and resolve any interests and relationships.

(c) Objectivity

In carrying out public business, including involvement in making public appointments, awarding contracts, or recommending individuals for rewards and benefits, Members must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

(d) Accountability

Members are accountable to the public for their decisions and actions and must submit themselves to whatever scrutiny is appropriate to their office.

(e) Openness

Members should act and take decisions in an open and transparent manner. They should give reasons for their decisions and information should not be withheld from the public unless there are clear and lawful reasons for so doing.

(f) Honesty

Members should be truthful. Members have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

(g) Leadership

Members should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

4.2 Members shall—

- (a)* act in good conscience;
- (b)* respect the intrinsic dignity of all;
- (c)* act so as to merit the trust and respect of the community;
- (d)* give effect to the ideals of democratic government and abide by the letter and spirit of the Constitution and uphold the separation of powers and the rule of law;
- (e)* hold themselves accountable for conduct for which they are responsible;
- (f)* exercise the privileges and discharge the duties of public office diligently and with civility, dignity, care and honour.
- (g)* respect the duty of confidentiality and the principle not to breach commercial confidence.

4.3 Immunity from legal proceedings granted under section 3 of the St Helena Legislative Council Proceedings Ordinance, Cap. 6, protects the right of Members to speak in Council without fear of prosecution or suit for defamation.

5. Duties of Members

5.1 The principal duty of a Member is to act in the interests of the people of St Helena. In doing so Members have a duty to uphold the ***Partnership Values*** set out in section 2 of the Constitution and to act on all occasions in accordance with the public trust placed in them.

5.2 Members have a duty to uphold the law.

5.3 Elected Members have a special duty to their constituents and should be accessible to the people of the constituency which they have been elected to serve, and represent their interests conscientiously.

5.4 Members should always behave with probity and integrity, including in their use of public resources.

6. Rules of Conduct

6.1 *Disclosure and Publication of Interests.*

- (a) Each Member shall disclose all relevant interests that a reasonable person might think could give rise to the perception of influencing behaviour between the Member's duties and responsibilities and his or her personal interests. These interests include land and property assets, share-holdings, gifts, foreign travel, symbolic rewards (such as an honorary degree), sources of income, remunerated employment, directorships, liabilities, hospitality and affiliations. These will be recorded in the Register of Interests which will be maintained by the Clerk of Councils.
- (b) Members must declare these interests within 7 days of election to the Legislative Council in the Register of Interests kept under section 53 of the Constitution. Members must keep their entries in the Register up to date, but the register is not a substitute for declaring interest before participating in any formal or informal proceedings in which they have (or might appear to have) a conflict of interest. Transparency in this regard is fundamental to the preservation of public confidence in the democratic process and Members shall always be open and frank in drawing attention to any relevant interest in any meeting, and in any communications with other Members, public officials or public office holders. If Members experience any conflict between personal interest and the public interest they should resolve this at once and in favour of the public interest.
- (c) A Member shall not vote on a question about a matter, other than public policy (i.e. government policy), not identifying any particular person individually, in which he or she has a particular direct pecuniary interest.
- (d) Information which Members receive in confidence in the course of their duties should be used only in connection with those duties. Such information must never be used for the purpose of personal benefit or financial gain or of that of their families or friends.
- (e) The Council shall cause to be published the interests disclosed and the purposes and amounts of expenditure of public funds by each Member as soon as practicable in the Government Gazette.
- (f) These provisions also apply to interests held by the Member's spouse or de facto partner.

6.2 *Use of Public Property*

Members are personally responsible and accountable for ensuring that their use of any expenses, allowances, facilities and services provided from the public purse is in accordance with the rules laid down on these matters and that their use of public resources is in the public interest and is always in support of their duties. It should not confer any undue personal or financial benefit on themselves or anyone else.

Any public property remains the property of SHG and should be returned at the end of term except when otherwise agreed.

6.3 *Inducements*

- (a) A Member shall not accept any form of inducement that could give rise to conflict of interest or influence his or her conduct as a Member, including any fee, compensation or reward in connection with the promotion of, or opposition to, any Bill, Motion, or other matter submitted, or intended to be submitted to the Council. Official hospitality by the Governor, visiting officials, and the like, raises no issues; however, Members should not accept gifts, hospitality or services that might appear to place the recipient under any form of obligation to the giver.
- (b) A member shall not engage in paid lobbying, paid advice or paid advocacy in any proceedings of the Council.
- (c) A Member shall not use his or her position to seek or secure future employment, paid lobbying, consultancy work or other remuneration or benefit upon ceasing to be a Member.
- (d) An Elected Member shall represent the interests of constituents on an equitable basis and not on the basis of personal or political affiliations, or inducements.

6.4 *Civility*

Members shall treat each other, the Council, officers of the Public Service and members of the public with respect, dignity and courtesy.

6.5 *Behaviour*

- (a) Members shall never undertake any action, or in the course of both their public and private conduct, act in a manner which would cause significant damage to the reputation and integrity of the Council or of its Members generally. Members should at all times conduct themselves in a manner which will maintain and strengthen the public's trust and confidence in the integrity of the Council.
- (b) When representing St Helena on official business overseas, Members must be mindful of their representational role and statesmanship. They should agree statements they are proposing to make with their colleagues and officials concerned before leaving St Helena.

6.6 *Attendance*

- (a) Members must give priority to attendance at Meetings in accordance with the terms of their oaths for due execution of office, and should be present in the Council Chamber or other designated meeting places when Meetings are held unless they have compelling reasons not to do so. Informal meetings may be regarded as less important than formal ones, but absence still needs to be justified.
- (b) Members must be adequately prepared for the Meetings they attend, which includes prior reading of relevant documents. To arrive ill-prepared, or late, is discourteous

to colleagues, wasteful of resources, and capable of sustaining a finding of misconduct.

6.7 *Absence from St Helena*

Elected Members (including, for this purpose, the Deputy Speaker) may not be absent from St Helena, except for the purposes of official business, or with the prior written permission of the Speaker. It is the responsibility of the Elected Member to make sure that she or he receives the written permission of the Speaker. If the Speaker proposes to be absent from St Helena, he or she shall inform the Governor and the Deputy Speaker.

6.8 *Dealing with the Media*

Members, like everyone else, enjoy freedom of expression and may (subject to issues of confidentiality and respect for the rights of others in terms of their privacy) speak freely to and in the media. However, Members must take care to make clear whether they are expressing their personal opinions, or the collective position of the Council or a Committee. The public have a right to a clear understanding of which is which. In addition, care must be taken not to report informal discussions in such a way as to suggest that a decision has been made. A Member may, subject to the relevant media legislation and codes of practice, present radio or television programmes or publish articles in the printed media. However, it is especially important in such circumstances for the Member to ensure absolute clarity whether he is expressing his own views or his understanding of the views of others; fact or opinion; proposals/suggestions, or agreed policy; and so on. The expression “I understand that ...” is not an acceptable substitute for verifying facts before reporting them. Members must recognise that their uttering and writings may, because of their positions as Members, have greater public impact than those of others; this special position carries with it a special responsibility to ensure clarity and accuracy.

6.9 *Relationship with the Public Service*

Members will wish to develop a mutually respectful relationship with the public servants with whom they work

No Member should use their influence to support the candidature of any person for recruitment to or advancement within the public service. While this does not completely rule out providing a character reference, Members should think carefully about whether the candidate has alternatives and how providing a reference might be interpreted.

Members should not subject officers of the public service to unjustifiable pressure.

7. Enforcement

7.1 *Complaints and Investigations*

(a) Any complaints by Members of the Council or members of the public alleging that the conduct of a Member is in breach of this Code, must be made in writing and addressed to the Speaker.

- (b) The Clerk of Councils shall maintain a list called the Panel of Investigators which shall be submitted to the Council for approval at the beginning of each new term. Members of the Panel of Investigators shall be members of the community whose role is to assist in investigations about the conduct of Members of the Legislative Council. The members of the Panel of Investigators shall be non-partisan and have knowledge, investigative skills, experience, personal qualities and standing within the community suitable to perform this role.
- (c) Whenever the Speaker receives a complaint, the Speaker shall refer the complaint to the Deputy Speaker and two members of the Panel of Investigators whose availability the Clerk of Councils will ascertain in advance.
- (d) If the complaint is in relation to the Speaker, the Deputy Speaker shall perform the role of the Speaker in appointing another Elected Member to take the Deputy Speaker's place. If the complaint is against the Deputy Speaker, the Speaker shall appoint an Elected Member to take the Deputy Speaker's place.
- (e) Once the two Investigators from the Panel of Investigators have been identified and confirmed their availability then these two together with the Deputy Speaker (or another Elected Member if the investigation relates to the Speaker or Deputy Speaker) shall be constituted as the Investigative Commission.
- (f) The remuneration of the Members of the Investigative Commission, other than the Elected Member part of it, shall be of £35 per meeting per person to a maximum of £140 per investigation and mileage at the rate of £0.60 per mile.
- (g) Once appointed, the Investigative Commission shall not be removed except for proven misbehaviour or on other reasonable grounds.
- (h) The Investigative Commission may determine that:
- i. the complaint is frivolous or vexatious and decline to investigate it;
 - ii. there has been a breach of the code; or
 - iii. there has not been a breach of the code.
- (i) The investigative Commission must:
- i. treat any complaint as if sub judice;
 - ii. refer the complaint to the Police if the Investigative Commission thinks that there are reasonable grounds to believe that an offence has been committed;
 - iii. conduct the investigation within the agreed timescale, which will usually be 30 days from the date upon which the Commission is constituted in accordance with paragraph 7(1)(e) above;
 - iv. save where the complaint is found to be frivolous or vexatious, present a report to the Speaker, a copy of which shall be sent to the Member subject of the investigation and to the Complainant and be tabled at the next formal meeting of the Legislative Council as a sessional paper. The report must state the nature of the complaint, summarise the evidence received in relation thereto and record the conclusion;

- v. state in their report whether or not the Member investigated has breached the Code;
 - vi. if there is a breach of the Code, impose such sanctions on the Member, as it considers appropriate;
 - vii. in the event that a complaint has become known publicly and the Investigative Commission has not upheld the complaint, recommend that this outcome be made public.
- (j) A complaint may be withdrawn at any time before the report of the Investigative Commission has been tabled. If the complaint is withdrawn, the investigation shall cease and no report shall be tabled.
- (k) A Member of Council that is subject to an investigation must:
- i. treat any complaint as if sub judice;
 - ii. cooperate with and assist the Investigative Commission.
- (l) The findings of the Investigative Commission shall not be disturbed other than in accordance with this subparagraph. In the event of an appeal by the Complainant or by the Member subject to the investigation, the grounds of the appeal must be clearly set out. The Speaker shall appoint another Investigative Commission (whose members have not been in the original Investigative Commission) to carry out an investigation only of those grounds of appeal. The findings of this second Investigative Commission shall be final.

7.2 *Sanctions and Penalties*

- (a) Where the Investigative Commission has concluded that there has been a breach of this Code of Conduct, it may impose any of the following sanctions:
- i. require a written apology;
 - ii. for relatively minor failures to declare interests, an apology on the floor of the Council by means of a point of order;
 - iii. an apology on the floor of the Council by means of a personal statement;
 - iv. suspension from the Council for a specified number of days;
 - v. publication of the sanction in the Government Gazette.
- (b) A Member convicted of an offence may, in addition, be subject to a sanction or penalty if found to have breached the Code.