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EXTRAORDINARY

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No. 195

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

Provision made by the Governor for enabling Public Officers to be Qualified to be Elected as Elected Members of the Legislative Council (Schedule 1, section 49(3))

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 will 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 is 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. 135 of 4 August 2016.

SCHEDULE**SCHEME “A”**

An officer with non-pensionable status who is not otherwise disqualified by section 49 of the Constitution may stand for election on the basis that, if elected, the officer’s employment with Government will thereupon terminate.

In such cases, if the officer is a successful candidate and is elected—

- (a) the officer is deemed to have resigned from employment effective 7 days after the date of the election, but may elect to take paid or unpaid leave during that period;
- (b) any accrued leave will be commuted to cash (subject to Income Tax) at the rate of pay prevailing at the date of the election;
- (c) the officer will be eligible to receive a gratuity if the non-pensionable office as defined in the Pensions Ordinance 2012, was held immediately prior to election and any gratuity payable will be paid as soon as is reasonably practicable after the date the resignation takes effect; and
- (d) the officer will be eligible for a contributory pension as provided for in the Legislative Council (Remuneration and Allowances) Ordinance, 2010 and the pension contribution in respect thereof will be payable on the officer’s behalf, to a Defined Contribution Pension Scheme approved by the Financial Secretary, for the duration of the officer’s term as a Councillor.

SCHEME “B”

This Scheme applies in respect of—

- (a) an officer with pensionable or non-pensionable status by virtue of holding a pensionable or non-pensionable office as defined in the Pensions Ordinance 2012; or
- (b) an officer who receives a contribution into an approved Defined Contribution Pension Scheme under the officer’s 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, the officer will be released from the officer’s duties in the public service without pay for the duration of the term as a Councillor.

In such cases, if the officer is a successful candidate and is elected—

- (i) the officer will be released from the performance of the officer’s duties in the public service with effect from 7 days after the date of the election, but may elect to take paid or unpaid leave during that period;

- (ii) the officer will be eligible for a contributory pension as provided for in the Legislative Council (Remuneration and Allowances) Ordinance, 2010 and the pension contribution in respect thereof will be payable on the officer's behalf, to a Defined Contribution Pension Scheme approved by the Financial Secretary, for the duration of the term as a Councillor;
- (iii) on cessation of the term as a Councillor, the officer 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 the officer as a result of a performance appraisal for work in the officer's previous position in the public service; and, with any cost of living increases the officer would have received if the officer had remained in service; and
- (iv) in the case of—
 - (aa) an officer with pensionable or non-pensionable status, 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 and the term in itself will not 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 to whom paragraph (b) refers, the contribution into an approved Defined Pension Contribution Scheme under the officer's contract of employment will cease temporarily due to the temporary suspension of the contract of employment and will recommence upon the officer's return to the public service.

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, the officer will resign from the public service. The officer will be required to provide advance notice of the intention to resign should they be successful for election, as required by the officer's contract of employment.

In such cases, if the officer is a successful candidate and is elected—

- (a) the officer will cease the officer's 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 as defined in the Pensions Ordinance 2012, and has completed at least 10 years' service, the officer's pension will be deferred until the officer opts to retire as provided for in the Pensions Ordinance, 2012;
 - (ii) receives a contribution into an approved Defined Contribution Pension Scheme under the officer's contract of employment, this contribution will cease due to the termination of the officer's contract of employment;

- (c) the officer will be eligible for a contributory pension as provided for in the Legislative Council (Remuneration and Allowances) Ordinance, 2010 and the pension contribution in respect thereof will be payable on the officer's behalf, to a Defined Contribution Pension Scheme approved by the Financial Secretary, for the duration of the officer's term as a Councillor.

Dated this 30th day of October 2019

Philip Rushbrook
Governor
