

**SUPPLEMENTAL NOTE TO THE REPORT ON REVIEW  
OF THE ELECTIONS ORDINANCE**

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**FOR THE SOCIAL AND COMMUNITY DEVELOPMENT  
COMMITTEE**

March 2021

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1. The Social and Community Development Council Committee (the 'SCDC') considered the 'Report on Review of the Elections Ordinance' at its meetings of August and September 2020.
2. Subsequent to that initial consideration further matters arose, namely:
  - (i) At the request of Councillor J Ellick, made to the Chairman Mr Green, matters relevant to elections in St Helena and international observance of those elections.
  - (ii) From the SCDC minutes, a matter of review of Recommendation 2.
  - (iii) Councillor Thomas' feedback to SCDC that in public consultation for the immigration policy some members of the public had enquired as to whether those without St Helenian Status should be able to vote in elections in St Helena.
3. An outline response to these issues is given here.

**Matters relevant to elections in St Helena and international observance of those elections.**

4. Although not within the initial Terms of Reference Councillor J Ellick notes that in other jurisdictions there is at least provision for elections to be observed by other states or international bodies. Generally, the benefit of such observer missions as are invited by a host-state are to provide non-political observance of a state's election, to provide assurance and critical review as to whether the election is free and fair and thereby aims to assure as much to parties inside and outside of the host state.
5. In the last three years the Commonwealth Parliamentary Association (British Islands and Mediterranean Region) have conducted Election Observation exercises in Jersey (2018), British Virgin Islands (2019) and Anguilla (2020). Each report aims to assess the relevant election exercise observed from preparations for nomination day through to a final result. The observer mission is to evaluate the process for compliance with domestic legislation, compliance with international standards and best practice, the adequacy of measures provided for and any recommendations that can usefully be made.
6. A number of election observing bodies signed up to the 2005 Declaration of Principles for International Election Observation (the 'Declaration') and an associated Code of Conduct for International Election Observers. The Commonwealth Secretariat was one such subscribing body. The relevant declaration is available here:
7. To facilitate international election observation then, by the standard of the Declaration, a host state must extend an invitation for such observer mission and must 'guarantee unimpeded access for the international election observer mission to all stages of the election process, technologies, officials' and the like.
8. The current Elections Ordinance and Elections Regulations apparently do not anticipate international election observers. To accommodate such observers provision might be made by amendment in the following respects:

- a. At Regulation 4 of the Elections Regulations, candidates, sponsors and supports must be permitted to examine nomination forms. There is no provision for recognised election observers to do so.
  - b. At Regulation 13 of the Elections Regulations, 2009 the Presiding Officer is presently required to exclude from the polling station anyone who is not a candidate, candidate's agent, assistant Presiding Officer, police officer on duty, the Returning Officer or electors or companions of incapacitated electors. Some provision would need to be included to allow recognised election observers to also remain present.
  - c. At Regulation 14 and 15 of the Elections Regulations, only those otherwise authorised to be present at the Polling Station witness the setting out and making up and sealing of the ballot boxes and voter slips.
  - d. At Regulation 16 of the Elections Regulations, before counting the votes the Returning Officer opens the ballot box, counts the ballots in it and mixes the all ballots from all boxes together. This must take place in the presence of candidates and their counting agents. Not provision is presently made for recognised election monitors.
  - e. At regulation 20 of the Elections Regulations, there is no express provision for any person to witness the Returning Officer sealing up ballot papers and other documents relating to the election and delivering the same to the Chief Secretary.
9. While there are no particular restrictions likely to impeded an international election observation mission within the Elections Ordinance itself an amendment to recognise any such mission as may be prescribed will assist in making the assistance of the law readily apparent for this purpose, if desired.

**A review of Recommendation 2 of the sub-committee report.**

10. In August 2020 SCDC sought some review of the Recommendation 2, specifically whether the Register of Electors should, or could, remain open for new additions or corrections immediately after a writ of election is issued.
11. The difficulty, in terms of administering the election, is that an authoritative Register of Electors needs to be available during the election cycle; starting with nomination day and culminating with Polling Day and the Count. Set against that the timing of an election is variable. By the Constitution it is to be not less than 6 weeks and not more than 3 months from the dissolution of Legislative Council.
12. Further, the urgency or circumstances of an election may be of significant importance and particularly as, with Legislative Council dissolved (unless recalled), there is potentially an abeyance of democratic representation. In effect, the present starting point, is that at anytime throughout the year electors may update their details and the whole list is available for public scrutiny as the Provisional Register of electors on or before 1<sup>st</sup> May each year and

is subject to challenge and objection procedures in the weeks following if any issue is properly raised.

13. For these reasons it is suggested that if opening the Register of Electors to new entrants on or after a writ of election is published it would be desirable to do so in a way that can still facilitate an election within 6 weeks of dissolution of Legislative Council. Guidance would be sought from SCDC as to whether an expedited process for new entrants only (rather than objections and removals) should be permitted; and even then whether, for public confidence the Register should be published as a Provisional Register of Electors with 14 days' notice for comments. Even if restricting the opening of the register to new entrants there would be little to no time to resolve any appeal to the Magistrates Court. Such appeal is open by section 5 of the Elections Ordinance to be made up to 7 days from the date of the Registration Officer's final decision.
14. If allowing a week after dissolution of Legislative Council for applicants to the Register, updating the register, publishing the same for comment for 14 days, considering any issues raised and publishing a finalised register means, at best, it will be 4 weeks since dissolution (and potentially two weeks from the earliest Polling Day), that nominations, proposers and seconders can be received for the purpose of the election. There is also some risk that 'opening' the register of electors so close to an election risks 'politicising' this administrative process if prospective candidates do, or are perceived to be 'packing' the register.
15. These issues aside, it is, administratively possible to open the register of electors for a short time after the dissolution of Legislative Council; a change to the Elections Ordinance would be required.

#### **Whether those without Saint Helenian Status should be allowed to vote?**

16. The SCDC Elections Review sub-committee were tasked by original Terms of Reference to consider matters touching on the administration of elections.
17. At present eligibility to stand for election and to vote in an election is restricted by:
  - a. Having St Helenian Status,
  - b. Having attained the age of 17 years, and
  - c. Being present, and ordinarily resident on St Helena.
18. There is in fact no citizenship criteria for eligibility to be an elector in St Helena as there may be in the other countries (including the UK where Irish, EU, Commonwealth or other nation's citizenship variously affects voting rights).
19. Being a near-permanent immigration status 'St Helenian Status' is perhaps analogous to Indefinite Leave to Remain status in the United Kingdom; which is often relevant there for immigrants right to vote. The criteria for grant of Saint Helenian Status is, by the Immigration Ordinance, that the applicant:

- a. Is of good character (and has not been on island in breach of immigration laws),
  - b. Intends to make St Helena their principle home (or one of their principle homes),
  - c. And either;
    - i. Has been in St Helena for a period of 5 years, being absent for less than 500 days in total (and less than 100 days in the 12 months before applying), or
    - ii. Is in marriage or life partnership with a person of St Helenian Status and has been on the island for 3 years with less than 150 days absence in that time, including less than 100 days absence in the 12 months before applying.
20. The Governor in Council may additionally grant dispensation from the 'time on island' requirement if satisfied that the applicant has substantial economic, social or historical connection to the island and there are exceptional circumstances for so doing.
21. The key issue for any reform of the Elections law in this matter is:
- a. Would Committee wish to retain the requirement that a person must be present and ordinarily resident on St Helena at the time of applying to enter the Register of Electors; and
  - b. In what circumstances would committee wish for someone who doesn't qualify for St Helenian Status – but who is ordinarily resident on St Helena - to be eligible to vote.
22. To put it another way, which persons - ordinarily resident on St Helena (or not) – should be allowed to vote if:
- a. They are married or the life partner of someone with St Helena Status but have not been on the island for three years (or have been on island for 3 years but with more than the permitted absence), or
  - b. They are not married or in life partnership with a person of St Helenian Status but who has been on the island less than 5 years (or for 5 years but with more absence than is currently permitted).
23. A naturally related issue may be – in respect of such persons – whether it preferable to extend to them the right to vote; or alternatively to extend the right to St Helena Status overall to them? This is relevant as to which ordinance any change is to be effected under (the Immigration Ordinance or the Elections Ordinance) but this and related issues are not otherwise issues that have bearing on the administration of elections. These are political issues (at paras 21-23) for the wider franchise or its representatives.