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St Helena Government

ST HELENA GOVERNMENT

ST HELENA GOVERNANCE REVIEW REPORT

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UK Government Centres of Expertise
Democratic Governance

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St Helena Governance Review

Report

June 2025

UK International Development
Partnership | Progress | Prosperity

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Introduction

1. St Helena is part of a British Overseas Territory in the South Atlantic. Following the Sarkin Report,[1] St Helena moved to a Ministerial system of government in 2021. There have been some concerns that the full benefits of the new system have not yet been realised, particularly in terms of more accountability and more effective decision-making. The Foreign, Commonwealth and Development Office of the UK, through the Westminster Foundation for Democracy, engaged us as independent experts to carry out a review of the Ministerial system. Annex 1 sets out our backgrounds.

2. The recommendations set out in this Report support incremental rather than radical change, and ways of embedding the Ministerial system of government, which is here to stay. The recommendations are to empower Ministers to make effective decisions, aided by the Public Service. The Governor provides an essential check in the system to ensure good governance. The recommendations strengthen the role of elected Councillors to hold the executive to account in a transparent fashion. The Attorney General provides independent legal advice and at the same time delivers high quality legal services to both the legislature and the executive

3. Our goal is good governance. We are very happy to endorse the definition of good governance given to us by the Equality and Human Rights Commission in their submission to us: "It involves respecting the rule of law, safeguarding human rights, maintaining transparency, ensuring accountability, promoting inclusivity, and fostering public participation in decision-making …. Good governance is also essential for maintaining stability, trust, and legitimacy in political institutions, which strengthens democracy and promotes cooperation among stakeholders".

4. In Annex 2 we list our recommendations. In addition, in the course of the Report, we embolden text which indicates observations or conclusions, but which does not form the basis of a recommendation. We also use this style where we see no reason to make a change to current arrangements.

5. We note in Annex 2 whether our recommendations require constitutional, legislative or administrative change. Administrative and legislative change can be decided upon and implemented on-Island. The Governor is unable to make constitutional change on his own authority as this power lies with His Majesty's Government. We are very well aware of the complexities of making constitutional change, including the possibility of a plebiscite to authorise major amendment. There are also risks to the integrity of the founding document if changes are made piecemeal. So, we do not recommend constitutional changes lightly but point them out if they are necessary precursors to the implementation of certain of our recommendations.

6. We made two visits to St Helena, in December 2024 and March-April 2025, spending in total a month on the Island. We carried out some 85 separate engagements with interested parties and considered a wide range of documentation. Typically, our meetings were face to face interviews for an hour or more. Annex 3 details our engagements.

7. Following our first visit we produced an interim report in January 2025. This was produced explicitly to provide an opportunity for facts and interpretations to be corrected or challenged – although it

[1] Professor Dr Jeremy Sarkin *St Helena Political Governance Review* (2019).

was perhaps too readily taken to represent our final conclusions. During our second visit we discussed our findings with relevant actors, many of whom we had met in December 2024, and we adjusted our recommendations as a result. We then reviewed and revised our interim report, producing a final Report, which was subject to peer review, and which we now present.

8. It has been suggested that we have relied too much on the opinions of those whom we have met. We respectfully disagree. Perceptions – especially of those directly involved – are extremely important; and are in themselves strong evidence. Most of what we said in our interim report was agreed with by most people we interviewed. In a small number of cases, there were diametrically opposed views amongst stakeholders. In coming to our final recommendations in these areas, we appreciate that these diametrically opposed positions are still there. Whilst we acknowledge the passion with which such views are held, it is our responsibility to reach our own conclusions and make recommendations based on these conclusions.

9. One concern we seek to allay at the outset. It has been said by some that we came to St Helena with our conclusions already formulated. Not so. We came with open minds, seeking to apply our collective Parliamentary, legal and governance knowledge and experience to this very worthwhile endeavour.

Saint Helenians making decisions for St Helena

10. St Helenians – by which we mean residents of the Island – are the people best placed to make decisions about what happens on St Helena. This view of the clear majority of those to whom we spoke. Very few seriously suggested that greater decision-making powers should be exercised by the UK Government.

11. This is in accordance with the right to self-determination, a human right under international law. It is in accordance with the political principle of subsidiarity, that decisions should be taken, so far as possible, at a local level. It is also in accordance with the long-standing practice of the UK Government with regard to the British Overseas Territories that "powers are devolved to the elected governments of the Territories to the maximum extent possible consistent with the UK retaining those powers necessary to discharge its sovereign responsibilities".[2] At a practical level, provided those on the ground have the competence, capacity and capability, they are best placed to assess, and respond to local needs.

12. St Helenians making decisions for St Helena is therefore the principle underlying our analysis. This must take three things into account:

- The appetite and readiness of St Helenians to make decisions.
- The UK's constitutional responsibility for St Helena.
- St Helena's status as a donor-aid-dependent territory combined with the UK's need to ensure that aid money (ultimately coming from UK taxpayers) is properly spent.

[2] Foreign and Commonwealth Office *The Overseas Territories: Security, Success and Sustainability* (June 2012)

Constitutional relationship with the UK

13. Under the Constitution, the Governor has "special responsibilities" for certain matters. These are matters where the UK Crown (in practice the UK Government acting through the Governor), has sole executive responsibility. In other jurisdictions, such as the devolved jurisdictions of Scotland, Wales and Northern Ireland, these are called "reserved" or "excepted" matters: matters which are not for local decision-making, but which are reserved to the UK Government. These are areas of constitutional significance, for example defence, security or external relations, where it is appropriate for the UK to act using its sovereign powers. The precise extent of special responsibility is not set in stone; it changes over time and varies by jurisdiction. In British Overseas Territories, the Crown also retains a residual, or backstop power, to act for the "peace, order and good governance of the territory".[3] This residual power is inherent in UK sovereignty over St Helena.

14. St. Helena is not self-financing. It is an Official Development Assistance (ODA)-eligible UK Overseas Territory. St Helena's total budget for 2023/24 was £47,072,000 of which £33,060,000 or 67.8% was provided by His Majesty's Government (HMG). Following the Financial Aid Mission in January 2025, HMG allocated £35.79M as a contribution to the St Helena budget for the 2025/26 financial year. This represented a 5% increase on 2024/25 (in cash rather than real terms).[4]

Partnership values

15. It is worthwhile drawing out one aspect of the Constitution in our introductory remarks – the partnership values. Section 2 of the Constitution states that the relationship between the UK and St Helena continues to be based on the following partnership values:

- good faith,
- the rule of law,
- good government,
- sound financial management,
- the impartial administration of justice,
- the impartiality of the St Helena Public Service,
- the maintenance of public order,
- compliance with the applicable international obligations of the UK and of St Helena, and
- the maintenance of international peace and security and the right of individual or collective self-defence

16. These values are as relevant now as they were when the Constitution was made. We fully endorse them, and they underpin the analysis set out in this Review.

[3] Art 14 of the Constitution Order.
[4] See *Joint Statement by FCDO and St Helena Government, 16 April 2025.*

17. Although diversity in government structures was not an explicit part of our terms of reference, it is an important component of good governance. St Helena's past has been influenced by its colonial roots. It was at one time owned by the East India Company, an institution which some have argued has left a legacy of plunder across the globe. The history of slavery is still visible on the Island. But despite this challenging legacy, we were impressed by gender, race, age, and disability diversity within governance structures. Two of five Ministers (including the Chief Minister) are female, as is the top public servant, the head of the Governor's office, the Deputy Speaker, and three of seven Councillors.

The reality of government in a small jurisdiction

18. With a population of just under 4,000 and declining,[5] it is unrealistic to expect that St Helena has the personnel to staff all levels of the executive, legislature, judiciary, and public service. The skills, experience and abilities will simply not all be available with such a small pool of individuals to choose from. This should not be seen as a criticism of those currently performing these functions. It is just a reflection of reality.

19. Another challenge is that in a small jurisdiction conflicts of interest will be inevitable. In most cases, a decision-maker will have a personal, financial or social connection (either direct or indirect) with those affected by that decision. If the decision-maker were to step aside in every single case of a conflict of interest, then decision making would cease. This has implications for the way the processes of government are perceived, and for how standards of conduct are set and addressed.

20. The final challenge is that all decisions will ultimately be personal. There is not the detachment between decision-maker and citizen that is present in a large jurisdiction. Decision-makers do not have the benefit of anonymity; they will bump into those affected by their decisions every day, and those affected will know who made the decision affecting them. In some ways this personal relationship provides a level of accountability not seen in larger jurisdictions.

Speed of implementation of the Ministerial system of government

21. Although some work had been done in advance, there was widespread agreement that the implementation of the Ministerial system in 2021 had been rushed (partly because of the need to fit in with election cycles). This meant that:

- systems were not properly in place in advance of the election,
- roles and responsibilities were not clear at the outset,
- the first years of ministerial government were spent working out roles and responsibilities, developing codes of conduct and so on, reducing the time available for governing.

[5] At the end of August 2024, the resident population was estimated at 3,974. See *Statistical update*, St Helena Government, 16 October 2024.

22. Having said all this, we are not convinced that delaying implementation to complete these things would have been the right thing to do. And some matters (such as a Ministerial Code of Conduct) could not have been developed until after the election.

Systems of government

Committee system

23. St Helena previously operated under a Committee system, based on a single electorate, with 12 elected Councillors, plus *ex officio* non-voting members: Speaker, Deputy Speaker, Attorney General (AG), Chief Secretary (CS) and Financial Secretary (FS). There were no portfolios allocated to Councillors, and a Committee system progressed matters. The limitations of the Committee system were many and varied, as identified by Sarkin. The major limitation was slow decision-making.

24. Following on from the Sarkin Review, a two-part consultative referendum on changing the system of governance was held on 17 March 2021. The first question asked voters whether there should be a change in the system of government, and in the second they were asked for their preference on the form of governance, choosing between a Committee system and a Ministerial system.

25. Although voter turnout was only 17% of those who voted, 79% supported a change, with the ministerial option chosen by 56% of voters. Voter turnout, and the majority in favour of the Ministerial system was small, yet such turnouts seem common in St Helena. A 2013 referendum to create a Chief Councillor, from among the 12 Councillors, was overwhelmingly rejected, but on voter turnout of less than 10%.

Ministerial system

26. The Ministerial system of Government began after the 2021 elections and is based on a single electorate, with 12 elected Councillors (although Councillors are allocated districts to represent), plus *ex officio* non-voting members: Speaker and Deputy Speaker, and Attorney General. The key outcomes, and advantages hoped for, included:

- more than half of the British Overseas Territories have adopted the Ministerial system, with lessons to be learned, synergies to be gained, and shared experiences,
- the election by Legislative Council (LegCo) of a Chief Minister, as head of government,
- the appointment, by the Chief Minister, of four Ministers from among the Elected Members who, together with the Chief Minister, form Cabinet,
- the determination by the Cabinet of major policy and platform priorities, to be reflected in the legislative programme,
- the Chief Minister, and Ministers, heading portfolios, determining policy, and being responsible to LegCo for those portfolios, their decisions and the implementation of policy,

- in addition to being responsible to LegCo, a more direct accountability and transparency to the public and the media, and
- a clearer line of responsibility of the Public Service to Ministers, via Portfolio Directors, or other heads of agencies.

27. Some stakeholders, both electors, and others, were disappointed that the Ministerial system had not yet delivered its full (promised) benefits, especially regarding transparency and accountability, and that confusion continues, in some areas, in respect of who is responsible for what, to whom, and how. This Report, whilst acknowledging that some of the criticism has merit, also notes that there has only been one four-year term under the Ministerial system. Some changes and improvements and benefits will take time.

28. One or two interviewees thought that St Helena could return to the Committee system or that greater powers could be given to the Governor. A few suggested a radical reform like moving to the Crown Dependencies model or the French system whereby all overseas territories were simply part of France. But the near unanimous view expressed to us was in favour of ministerial government.

29. **Government run by Ministers drawn from locally elected politicians is the best way to achieve the goal of St Helenians making decisions for St Helena. Whilst acknowledging that there are many challenges with implementation, it is the most effective form of government for St Helena**.

Governor and Executive Council

Division of functions

30. Under s. 34(1) of the Constitution, "the executive authority of St Helena is vested in Her Majesty". This is a constitutional sleight of hand that is a standard technique of the UK constitution. His Majesty has no personal power; the power is exercised, in the name of the Crown, by the UK Government. Under s. 34(2), the executive authority of the Crown is to be exercised, on behalf of the Crown, by the Governor.

31. S. 35 establishes an Executive Council (ExCo).[6] Under s. 36, the Executive Council may give advice to the Governor and under s. 36A, Ministers may meet to tender advice to the Governor. S. 43 is entitled "Governor to consult Executive Council". This title does not convey the proper meaning of the section. S. 43 obliges the Governor to obtain the advice of the Executive Council and then "act in accordance with the advice of the Executive Council". The power of ExCo to offer binding advice is an important element of executive power.

32. Some stakeholders thought that the Governor performed a valuable function of acting as a bulwark against bad decision-making by ExCo. We found that the general practice is that, although the Governor may question or probe the advice given by Ministers, he will invariably accept a decision

[6] Consisting of five Elected Members of the Legislative Council and two *ex officio* Members: the Chief Secretary and the Attorney General.

they have made. This a healthy sign of a maturing, and evolving system, and of roles and responsibilities reflecting contemporary approaches.

33. S. 43 of the Constitution sets out the exceptions where the Governor is not obliged to follow the advice of Ministers:

- the Governor acting on instructions of a Secretary of State (of the UK Government),
- matters for which the Constitution confers responsibility only on the Governor,
- matters which are the "special responsibility" of the Governor,
- urgent matters where there is insufficient time to consult,
- inconsistency with one of the partnership values set out in the Constitution.

34. Other than matters falling within the special responsibilities of the Governor, we are not aware of any of these exceptions being exercised. Even during the Covid pandemic, "urgency" was not invoked to bypass ExCo. This is a sign of maturity in decision-making and mutual respect.

35. The matters of special responsibility of the Governor are:[7]

- defence,
- external affairs,
- internal security, including the police,
- appointment, dismissal and pay and conditions of any office in the Public Service,
- administration of justice.
- finance

36. Instead of the Governor being the executive authority, but acting on advice of Ministers, it would be possible to flip the system so that Ministers are the executive authority, acting after consultation with the Governor. This would be a significant symbolic change but, as the Governor already acts on the advice of ExCo, it would in practice be less profound. We think that there is insufficient evidence that this change would be beneficial. More specifically, we think that the Governor's role as the ultimate source of executive authority provides a helpful safeguard in the system.

Recommendation 1 – greater clarity of roles for ExCo

37. We recommend that s. 35 of the Constitution should state in its title that the function of the Executive Council is to offer advice to the Governor on the exercise of the Governor's executive functions. The heading of s.43 should change from "Governor to consult Executive Council" to "Governor to act on advice of Executive Council". This is an important symbolic change to highlight the proper division of functions between Governor and Executive Council.

[7] S. 44 Constitution.

Responsibility for finance

38. We found it impossible to have legal certainty on how responsibility for finance works as the Constitution is at best confusing, and at worst contradictory, on this point:

- under s. 44(1)(f) the Governor has "special responsibility" for finance (although that responsibility can be delegated),
- numerous sections refer to "the Minister with responsibility for finance",[8]
- under s. 109A, "the Financial Secretary shall be responsible for finance and the principal financial adviser to the Government of St Helena". But as well as being "responsible for finance", the Financial Secretary is also "responsible for advising the Minister responsible for finance".

39. In legal and organisational terms, having three persons responsible for finance does not work. Either there is a hierarchy (for example, Financial Secretary reports to Minister who reports to the Governor), or there is a functional division of finance into different components, and each person has responsibility for one of those components, or there are interlocking oversight mechanisms. This legal confusion was reflected on the ground, with none of these three persons being entirely sure where their responsibilities started and stopped.

40. Drilling deeper into the Constitution and other legislation does not make things much clearer. Part 8 of the Constitution makes further provision for what is termed "public finance" (including taxation, the consolidated fund, annual estimates, appropriation Bills, public debt, annual accounts, lending and the role of the Chief Auditor). The Public Finance Ordinance 2010 makes some additional provision on finance, including setting out the role of the Financial Secretary. It is not clear to us if the Public Finance Ordinance 2010 is an official delegation of power from the Governor to the Financial Secretary (it does not use the word delegation), and we are not aware of any formal delegation of the Governor's special responsibility for finance. Under s. 6 of the Income Tax Ordinance 2012, changes in tax policy must be approved by LegCo. Under s. 5 of the Customs and Excise Ordinance 1999, rates of customs and excise duties are to be set by the Governor in Council by Regulations.[9] We note the written answer to the question in the House of Commons on the nature of responsibility for finance.[10] The answer does not shed much light, simply stating "In practice, day to day responsibility is exercised through Executive Council and as prescribed by subordinate ordinance".

41. Budget allocations between portfolios are decided by Ministers jointly in negotiations. The total size of the budget depends upon the amount of money raised on-Island, and the amount of money given by the UK Government. The Government's own source revenue (income tax, tariffs, licence fees, penalties etc) is very limited. Paragraph 14 sets out current total budget figures.

[8] Ss. 100, 101, 103, 104, 105, 109, 109A, 112.
[9] Governor in Council means the Governor sitting with the Executive Council, by virtue of s. 3(2) of the Interpretation Ordinance 1968 and ss. 43 and 44 of the Constitution.
[10] St Helena: Politics and Government: Question for Foreign, Commonwealth and Development Office, UIN 50828, tabled on 8 May 2025.

Recommendation 2 – clarification of special responsibility for finance

42. There is a need for clarification of the policy intention of giving the Governor special responsibility for finance, and how this relates to the role of a Minister for Finance and the Financial Secretary. This could be achieved through a concordat, or a memorandum of understanding, listing discrete elements of "finance" and stating which person has responsibility for them (Governor, Minister for Finance, or Financial Secretary). There needs to be agreement on who is best suited to exercise each element of financial responsibility. It is not possible for us for be definitive in detail on the precise division in this Report. If there were to be the appetite and capability on-Island, then the Governor's role could be one of oversight, rather than executive responsibility for finance.

Executive Council

43. Under s. 35 of the Constitution, ExCo consists of:

- The Chief Minister,
- The four other Ministers,
- The Attorney General (*ex officio* Member, without the right to vote).

44. ExCo is summoned by the Governor and must be summoned if requested by the Chief Minister.[11] ExCo meets regularly (sometimes every two weeks, sometimes monthly). Under s. 39(2) the agenda for ExCo is agreed upon between the Governor and Ministers. We found that this is routinely done, and that neither side vetoes an agenda item put forward by the other side. Under s. 39(4), it is for the Governor to preside at ExCo meetings.

45. It would be possible to have the Chief Minister (or another Minister nominated by the Chief Minister) preside over ExCo. This would be a symbolic change to indicate that Ministers are in charge rather than the Governor. However, we think that this would be of little benefit. **In our view, the Governor should continue to preside over ExCo**.

Openness of ExCo Proceedings

46. ExCo is free to regulate its own procedure.[12] There is no formal requirement for it to conduct its meetings either in private or in public. Under the previous committee system, ExCo meetings were held sometimes in private and sometimes in public. Most ExCo meetings are now held in private and as a rule the outcome of meetings is not disclosed. The official government website lists only the following regarding recent ExCo meetings and decisions:

- An open planning authority meeting – February 2025,

[11] S. 39 Constitution.
[12] S. 39(8) Constitution.

- An open planning authority meeting – July 2024,
- Governor in Council meeting - August 2023,
- Governor in Council meeting - February 2023,
- Other meetings in 2021, 2022.

47. It is disappointing that these are the only publicly available records of recent ExCo proceedings.

48. **The majority view, with which we strongly agree, is that as a general rule it is necessary for ExCo to sit in private.** There was polarisation among those we consulted on the issue of openness of ExCo meetings, agendas and outcomes. A significant minority were of the very strong opinion that lack of openness was a disgrace, that St Helenians were not being consulted, and that business was deliberately being carried out behind closed doors. This minority thought that this was a deterioration from the previous degree of openness under the Committee system.

49. Ministers and the Governor need to be able to have uninhibited discussions about policy choices. This will necessarily involve discussing options that will be politically unpopular. It also requires frank and candid discussions about the pros and cons of specific decisions. If these discussions were public, it would have a chilling effect as others (Councillors, the media, the public, and campaigning organisations) would predictably pick up on negative points and use them to attack decisions. This is not conducive to good decision-making. This point is expressly recognised in the UK in the Freedom of Information Act 2000, where s. 35 states that "exempt information" includes that relating to the formulation or development of government policy. Furthermore, it would be inappropriate for some discussions on identifiable individuals or commercially sensitive information to be held in public.

50. **On occasion, where it would not inhibit the frank discussion of policies, Ministers could agree that they are held in public**. For example, all ExCo meetings as the Planning Authority are currently held in public.

Recommendation 3 – ExCo decisions and reasons for decisions made public

51. If the decisions taken at ExCo, and the reasons for those decisions, were to be made public, this would partly allay concerns about secrecy and decisions taken behind closed doors. It would also improve transparency and accountability. If St Helenians knew what was being discussed, even though they did not know the details, they would at least be better informed and might be more understanding of the role and work of ExCo. This could be extended to the agenda items, so that St Helenians knew what was being discussed, even though they did not know the details. However, we recognise that there may still be instances where either no decision has been reached (or only an interim decision has been reached) but where the matter is too sensitive to be disclosed to the public yet. An example of this is the agreement on how British Indian Ocean Territory refugees might be settled on the island. In cases of this kind, it may not be appropriate for the public to be informed of an agenda item until a final decision has been made.

52. Ministers are of course free to communicate with the public on their work through other channels. We note the regular *In Scope* radio programmes on South Atlantic Media Services (SAMS) that are

hosted by Ministers. This is a good way to keep the public informed, regardless of the differences between an unofficial radio programme and an official record of an ExCo meeting.

53. As against all this, Ministers are elected to make the big decisions – that is their job. They do not have to consult with the public on every decision. The nature of democracy is that not everyone will agree with every decision made. Although the public (and in particular LegCo) should be informed about the general approach of ExCo and key decisions, a running commentary on every Ministerial decision is unnecessary.

54. We recommend that as a general rule the decisions taken at ExCo, and the reasons for those decisions, should be made public, unless there are strong grounds for not doing so.

Persons invited to attend ExCo

55. Under s. 39(7) the Governor (at the Governor's discretion, or at the request of the Chief Minister) may require the attendance at ExCo of any officer of the Public Service. We were told that the Chief Secretary (of the Public Service) will invariably attend all ExCo meetings. The Financial Secretary attends ExCo when requested to do so.

56. Several different views were put to us on whether the Chief Secretary and Financial Secretary should automatically be invited to attend ExCo meetings. We see no merit in a rule about who should always be invited. **As a matter of courtesy, the Governor and Chief Minister should jointly agree upon who will be invited to attend ExCo**. The AG, CS and FS will without doubt have valuable advice to offer ExCo, but they should not be seen as decision-makers at ExCo.

Chief Minister and Ministers

Election of Chief Minister

57. S. 37 of the Constitution, and LegCo's Standing Orders, set out the procedure for electing the Chief Minister. The Chief Minister must be an Elected Member, and it is for the Elected Members to nominate, second and then elect the new Chief Minister following the General Election.

58. We were told that in 2021, when the newly elected LegCo considered the vacancy of Chief Minister, it was agreed by the Elected Members that the candidate with the most votes at the General Election should be Chief Minister. This was Julie Thomas, who was nominated, seconded and elected unopposed as Chief Minister. The absence of political parties (or voting coalitions) at the General Election meant there was no "obvious" Chief Minister. We heard some criticism that Elected Members did not stand on a platform or have a manifesto, and therefore the electorate did not know what they were voting for. Democracy means that candidates put themselves forward for election in whatever way they think fit, and it is for the electorate to make the decision on who to vote for. **We consider that the basis on which the Chief Minister was elected by LegCo in 2021 was sound and reasonable. There is no obligation to follow the 2021 procedure following the forthcoming 2025 election**. It is possible that candidates, or groups of candidates, may campaign based on a particular Elected Member becoming Chief Minister.

59. It was suggested to us that there should be a short period of time (one or two weeks) following a General Election for all Elected Members to discuss, negotiate or lobby about which one of them should be Chief Minister. This is something which would come about without any formal provision.[13]

Removal of Chief Minister

60. Under the Constitution, the only way to remove the Chief Minister is by an expression of no confidence in the Government as a whole.[14] This can happen in two ways: if a motion of confidence is moved but lost, or if a motion of no confidence is moved and passed. Under the Constitution, if LegCo expresses no confidence in the Government, then the Chief Minister is deemed to have resigned five days later. Before this deemed resignation, the Chief Minister can actually resign or request the Governor to dissolve LegCo. If LegCo is dissolved, or if the Chief Minister resigns and no replacement Chief Minister is appointed, there will need to be a fresh General Election, with all the expense and delay involved.

61. **It was suggested to us that there ought to be a mechanism for forcing the Chief Minister to resign, but without removing the other Ministers from their offices. We do not think that this is appropriate.** To us, the following principles apply. First, since LegCo elects the Chief Minister, LegCo ought to be able to remove the Chief Minister. Second, since the Ministers are personally selected by the Chief Minister, if the Chief Minister goes, then they can have no right to remain. Third, if a new Chief Minister wishes to re-appoint the previous Ministers, then there is no objection to this. Fourth, removing a Chief Minister must not be a step taken lightly, especially as it could result in a fresh General Election.

62. **Applying these principles, we think that the current position in the Constitution is the correct one.** If LegCo wish to remove the Chief Minister, they must clear the hurdles set out in the Constitution and express no confidence in the Government. If they succeed, then the Chief Minister vacates office. If a new Chief Minister can be elected by LegCo, and new Ministers appointed by the new Chief Minister, then LegCo and the Government continue. If this is not possible, then the Governor must dissolve LegCo, and a fresh General Election is called. An additional mechanism to express no confidence in the Chief Minister would not result in an outcome any different from an expression of no confidence in the Government.

Appointment and number of Ministers

63. As is generally the case in ministerial systems, it is for the Chief Minister to decide who the four Ministers should be.[15] It was put to us that LegCo should elect the four Ministers.

64. Although LegCo agreed that the Elected Member with the most votes would be elected Chief Minister, the same logic did not extend to the Chief Minister's selection of the four Ministers, and the Councillor elected second in the election did not receive a portfolio. This was entirely at the Chief Minister's discretion, and properly so. It is important that the Chief Minister, as "captain" of the

[13] In 2021 election day was 10 October and the first sitting day was 25 October.
[14] S. 45B (6).
[15] S. 37D of the Constitution.

Elected Member team should be able to select Ministers from the remaining Councillors based on his or her confidence in them, and ability to work collegiately and effectively with them. It would be untenable if LegCo elected the four Ministers, and the Chief Minister had no or little confidence in them, or their skills and experience. **We see no reason to change the current practice.**

Legislative Council

Functions of LegCo and of Councillors

65. Under s. 47 of the Constitution, the legislature for St Helena is the Legislative Council.[16] This consists of 12 Elected Members (four of whom are Ministers and one Chief Minister), the Attorney General (as a non-voting Member) and a Speaker and Deputy Speaker. LegCo is to make "laws for the peace, order and good government of St Helena". This is the classic British formulation for the grant of legislative power to Overseas Territories.[17] The UK courts have decided that this is a plenary (meaning a full) power to legislate on any matter whatsoever, subject to restrictions set out in the Constitution of a territory.

66. The only function of LegCo, according to the Constitution, is to make legislation. However, the general practice in democracies around the world is that legislatures should:

- scrutinise, and hold to account, the executive,
- make legislation,
- scrutinise and authorise the budget,
- represent constituents, and
- debate issues of public importance[18]

67. There appears to be a widespread impression that LegCo can do no more than consider legislation (when that is forthcoming) and hold Question Times. For LegCo to play its full democratic role and hold the executive to account, it could set its sights higher. For example, (with any necessary amendments to Standing Orders), it could debate public petitions, the performance of a portfolio, progress on major public projects, or other public business. Doing so should not take away from the existing work of Public Accounts Committee (PAC) and the Select Committees.

68. Even given its present level of business, we were surprised at how little LegCo sits. From June 2024 to April 2025 there were seven sitting days.[19] It was put to us by some that the limited number of

[16] To be strictly accurate, it is the Crown (the King) and the Legislative Council, by virtue of s. 47 of the Constitution. This mirrors the position in the UK where it is the King in Parliament who makes legislation, rather than just Parliament. In the UK, the role of the Crown in making legislation is now mainly ceremonial.
[17] This formulation appeared in the British North America Act 1867 and the Colonial Laws Validity Act 1865. The formulation has been used repeatedly since then in UK legislation dealing with Overseas Territories and British colonies.
[18] See a similar list by Councillor Corinda Essex in a letter in *The St Helena Independent*, 4th April 2025.
[19] There was one sitting day in March 2024, and two, possibly four more sitting days (to deal with the Budget) were expected in May 2025. S 60(4) of the Constitution provides that "there shall be at least one meeting of the Legislative Council in each quarter of each calendar year."

sitting days reflected, in part, the lack of a legislative programme, and by others that even when legislation seemed to be an agreed priority, drafting outcomes were a problem. This is a waste of opportunities for democratic engagement and scrutiny. Among the current Chief Minister, and Ministers, there seemed a determination that the new LegCo would need to schedule more sitting days, to cover the "backlog" of legislation, and whatever priorities the new Cabinet, and LegCo might want to attach to legislation. However, we note the existence of "Informal LegCo" sittings. If these become formal LegCo sittings as we recommend, this would increase the number of sitting days recorded.

69. This will have a cost, but we think that the marginal cost should be modest as well as being thoroughly justified. A change in Standing Orders will also be required to ensure that the principal result of more sittings is not more lengthy question sessions, increasing the workload of the Executive. We return to this below in the context of ending "Informal LegCo".

70. There was agreement on the need for clarity of roles and responsibilities of Elected Members who were not Ministers. However, there were strongly divergent views put to us on the proper function of LegCo. There was not even agreement on what members who were not Ministers should be called:

- Elected Members who are not Ministers (technically correct, but long-winded),
- Councillors,
- Backbenchers,
- Crossbenchers[20],
- the Opposition,
- junior Ministers,
- Ministers in waiting.

71. A small number of people thought that Councillors should be part of the decision-making process of the Executive. The argument is that, on a small island, there are insufficient resources for Ministers to make all decisions, and therefore that Ministers would benefit from the experience of Councillors in helping to make those decisions. **We do not think that this is feasible. It would blur the lines between legislature and executive.** Furthermore, it would severely restrict the ability of Councillors to hold the Executive to account for decisions. It would also be a back-door revival of the committee system where everyone has a hand in decisions. It is for this reason that we also do not prefer "junior ministers" or "ministers in waiting"– Members who are not Ministers should not be seen in any way as pseudo-Ministers.

72. Some argued that Councillors should be seen as the formal Opposition, whose function was to oppose everything that the Ministers put forward. Each Councillor could formally shadow a specific Minister, so there would be the Leader of the Opposition, the shadow Health minister and so on. Although this is the way in which the UK government and opposition operate, it is unlikely to strengthen St Helena's Ministerial system for the following reasons:

- Elected Members are not elected on a party-political basis,

[20] This is the term used in the UK House of Lords for Peers who sit as independents and is also known in other jurisdictions such as Australia. But LegCo has no physical crossbench arrangements.

- it would create an adversarial culture which would not be constructive. Given St Helena's small population, a collaborative problem-solving approach would be preferable,
- Elected Members who are not in government have other ways of holding the government to account and which could be strengthened, as we describe below.

73. Councillors should see their function as being to challenge the Ministers, but in a constructive way. If Ministers are doing the right thing, then they should support them, and if Ministers are doing the wrong thing, they should oppose them. This can be seen as akin to constructive opposition, or Councillors being critical friends. This places considerable demands on Councillors – being able to separate personal disagreements with individual Ministers from debate on the merits of individual policies. It also requires political judgement – weighing up each action of Ministers on its own merits, rather than simply a knee-jerk response of rejecting it. From what we observed in LegCo meetings, Councillors are well able to carry out this function, and it could be strengthened by the training we recommend below.

Recommendation 4 – functions of LegCo and Councillors

74. There is a general understanding of what the role of Councillors ought to be, but this is not expressly spelt out anywhere. **We recommend that the Constitution be amended to specify that the functions of Councillors are**:

- **to represent citizens,**
- **to scrutinise legislation introduced by Ministers, and to initiate legislation,**
- **to provide oversight of Ministers and public servants,**
- **to scrutinise and authorise the Budget,**
- **to debate issues of public importance.**

75. **We recommend that LegCo should sit more frequently** (although this may be achieved partly by turning Informal LegCo sittings into proper LegCo sittings). Councillors should be more proactive in determining the business of LegCo. There are various ways in which this could be handled – perhaps by a small Business Committee chaired by the Speaker, comprising one Minister and one non-Ministerial Councillor.

76. **We recommend that the title Councillor be given to Elected Members who are not Ministers.** The catch-all term "Member of the Legislative Council" would therefore capture Councillors, Ministers, Speaker and Deputy Speaker and Attorney General.

Capacity building for Councillors

77. Although there were divergent views on the function of LegCo, there was agreement on the need for capacity building for Councillors. Induction on the machinery of government, standing orders and

so on was already available. But there did not appear to us to be any capacity development for Councillors on what their actual job was. There is no manual setting out what is expected of them.[21]

Recommendation 5 – capacity building for Councillors

78. **We recommend that Councillors have capacity building, specifically in the roles and functions of being a Councillor.** This should consist of the following elements:

- detailed induction and professional development, ideally regularly delivered on Island,
- a handbook for Councillors, and
- opportunities for continuous capacity building, via online interaction with other international elected members, or attendance at relevant conferences.

79. Although the incoming 2021 LegCo was provided with support through the CPA and UK Parliament, some Councillors expressed a wish for more such opportunities during their term of office. St Helena's isolation and the cost of travel also limited the professional development of Councillors. The detailed induction programme should address:

- roles and responsibilities – protection from defamation, privilege, office space and resources,
- scrutiny and approval of the Budget, and monitoring of public expenditure
- roles of Governor, Chief Secretary, Financial Secretary, AG, Chief Auditor,
- PDs – who they are, what they do, strategic plans and annual workplans,
- the legislative process and Private Members' Bills
- the nature of legislation
- LegCo – meeting dates and times, proceedings,
- Standing Orders,
- Code of Conduct – declarations, offences, gifts,
- entitlements – remuneration, allowances, pensions, travel entitlements, and
- protocol matters, including use of titles, order of precedence (when appropriate).

Legal advice for LegCo

80. There are few dedicated legal resources available to Councillors, the Speaker and Deputy Speaker, and the Clerk of Councils. In practice the AG provides legal advice to LegCo. In larger jurisdictions, there is a dedicated legal team, led by a Speaker's Counsel, who provide advice just to the legislature. That is not feasible in St Helena

Recommendation 6 – legal advice available to LegCo

81. There is no general problem with the AG providing legal advice to LegCo. On rare occasions, there may arise a conflict of interest, in which case independent legal advice may be necessary. The

[21] There is some relevant material in the *Ministerial Code of Conduct,* but it falls far short of what is needed.

Commonwealth Parliamentary Association (CPA) Benchmarks 2021 Report (Recommendation 14) suggested independent legal advice. We do not go as far as this.

82. **We recommend a tiered system for the AG giving legal advice. In most cases, it is appropriate for the AG to give advice to the Governor, ExCo and LegCo.** If the AG thinks there is a strong case for separate legal advice, then this could be done via Chinese walls within AG Chambers – one lawyer within AG Chambers could advise one party, and another lawyer within AG Chambers could advise another party. In very rare cases, where the AG thinks there is a need for external legal advice, the AG could authorise LegCo to obtain that external legal advice (even if it might not accord with his/her own view), either from the Public Solicitor, or some other external provider of legal services.

Recommendation 7 – enhanced role for Clerk of Councils

83. There is a wider issue here. The Members of LegCo have become used to seeing proceedings in an exclusively legal context and expecting a legal opinion whenever an issue arises with, for example, Standing Orders and the Constitution. Occasionally a legal opinion will be necessary. **But for the ordinary transaction of business, the advice of the Clerk of Councils, and if necessary, a ruling by or under the authority of the Speaker, will suffice.** An additional benefit is that this will produce quick answers. This is the norm in the great majority of Commonwealth jurisdictions. The CPA Benchmarks 2021 Report made a similar recommendation in recommendation 13.

84. This may mean that the Clerk's role needs encouragement, and greater recognition as a key adviser to the Speaker and LegCo. Support, advice and mentoring will be needed to develop this role, and can readily be made available, either in person or remotely, through the professional network of Commonwealth Clerks-at-the-Table.

Publication of proceedings

85. LegCo performs a key role in transparency and accountability, and its public sittings are vital. So, it is important that the Notice Paper prepared by the Speaker should be publicly available, in a timely manner so that citizens may attend LegCo or keep up with its work online. Equally important is the timely production of *Hansard*, as the public record of proceedings and decisions of LegCo. There have been substantial delays in the production of *Hansard*, with delays as long as a year. This is now being tackled, with the hope that during the Dissolution *Hansard* can be brought fully up to date. The Speaker needs to ensure that funding and resources are available to the Clerk to produce timely records of parliamentary proceedings. It may be that technical aids to transcription will help, and to this end the potential of Artificial Intelligence (AI) may expedite the processes leading up to the publication of proceedings.

86. Accessibility of the proceedings of LegCo is facilitated by SAMS transmitting live, but this could also be enhanced by live streaming over the internet or using a YouTube channel.

Recommendation 8 – publication of proceedings

87. **Sufficient resources, especially staff, should be devoted to the publication of the notice paper, and the timely transcription and publication of the proceedings (Hansard) of LegCo at the website.** This is consistent with both the Laurence Smyth Report and the CPA Benchmarks 2021 Report.

Email addresses

88. As a small but significant matter, we noted that Elected Members have various email addresses (Gmail, sthelena.gov.sh, helanta.co.sh). To differentiate the legislature from the executive, parliamentary email addresses should be adopted for all Elected Members (with Ministers having appropriate Ministerial email addresses, in addition to their constituency email address). Thus – Julie.Thomas@legco.gov.sh (or similar). This has several advantages:

- citizens know the protocol for emailing an Elected Member because it is consistent,
- emails from Elected Members acting in their official capacity are captured by the parliament/government email server for official records.

Recommendation 9 – dedicated email addresses for all Elected Members

89. **We recommend that all Elected Members should be allocated a dedicated, and consistent email address, based on gov.sh protocols or referring to LegCo in some way**.

Access by the public

90. There is no express requirement in the Constitution for LegCo proceedings to be held in public. Standing Order 20 states that "strangers may be present" at LegCo, but that they must withdraw when called upon by the Speaker. "Strangers" is an archaic term to describe members of the public who have voted for their elected representatives, or the media, or public servants, merely observing proceedings, or even visitors to St Helena. It was used in the Westminster Parliament, but that term is now obsolete.[22] A more modern formulation is "except as otherwise prescribed in Standing Orders the proceedings of the [legislature] shall be held in public".[23] **It should be only in exceptional circumstances that proceedings of LegCo take place in private**.

Separation of powers

91. In traditional separation of powers models, we distinguish between the executive, the legislature and the courts as the three branches of the state. In St Helena, the executive branch is further divided between the Governor and the elected Ministers. In terms of physical structures, the following are all based in the same building (the Castle): the Governor, and Governor's staff; Chief Minister and some other Ministers; ExCo meetings; LegCo, Councillors, Speakers and LegCo staff; Chief Secretary, Financial Secretary, other public servants. Although making practical sense, this makes it quite difficult to distinguish between the legislative and executive branch of the state, as well as the representative of the Head of State. The judicial branch is housed in a separate building.

92. Ideally, Governor, Ministers and LegCo should be physically separate from each other. This would reinforce the separation of powers between them. In practice, separate buildings would be costly

[22] See for example Standing Order No 125 of the UK House of Commons.
[23] Standing Order 7 of the Northern Ireland Assembly.

and not an effective use of resources. Our suggestion is therefore physical separation of the different branches of the state, but only in a way which is cost effective. In the context of substantial and continuing budgetary pressures, we do not recommend separate buildings. On the other hand, having representatives of all branches located together does offer ease of access and communication to each other, and potentially other economies, such as sharing office equipment.

Recommendation 10 – financial separation of LegCo

93. We note the October 2024 report by Liam Laurence Smyth.[24] Recommendations 1 to 7 of that report (see Annex 5 to this report) dealt primarily with issues of budgeting, auditing, resources available, and financial separation of LegCo from the Executive. Those recommendations suggested small, incremental steps towards separating out the role of LegCo from the executive. His report followed the 2021 CPA Benchmarks Report which suggested a larger change, to a Parliamentary Services Commission (PSC). Although we see the merit of a PSC, we consider it too resource intensive at this stage. We have carefully considered the findings of both reports and how they align with our own. **The net effect of the change set out in recommendations 1 to 7 of the Laurence Smyth Report would be to provide a modest pathway towards a degree of separation between legislature and executive. We think this is a sensible and thoroughly desirable goal.**

94. We understand that recommendations 1 to 7 from the Laurence Smyth 2024 Report have been accepted in full and we endorse them too.

Recommendation 11 – employment separation of LegCo

95. At present, staff of LegCo (the Clerks) are members of the Public Service and fall directly under the line management hierarchy of the Public Service. This is understandable in a small jurisdiction where it is not feasible to establish a separate employment structure for parliamentary staff. However, it is problematic from a separation of powers perspective that the legislature is not separate from the government. In order to make sure that the legislature is fully separate from the executive, it is important that public servants working for each branch of government are managed by more senior officials from their branch. Otherwise, there is a risk of the executive influencing the legislature through line management responsibilities.

96. **We recommend that the Speaker should have line management responsibility for the staff of LegCo. The precedent for this already exists within St Helena. Staff of the court service and of AG Chambers, although nominally part of the Public Service, report, in the main, to the judiciary and the AG respectively**. The relationship between public servants and Ministers is different to the relationship between public servants and judges, the AG and the legislature.

Speaker and Deputy Speaker

97. Under s. 47 of the Constitution, the Speaker and the Deputy Speaker are not Elected Members but are instead elected to those posts at the first sitting of LegCo.[25] The Speaker and Deputy Speaker

[24] Liam Laurence Smyth, St Helena Legislative Council: Review by House of Commons Senior Clerk (October 2024).
[25] S. 48 Constitution.

must be nominated and seconded by Elected Members, who then vote for them. The successful candidates for Speaker and Deputy Speaker are appointed by the Governor.

98. In most jurisdictions the Speaker and Deputy Speaker(s) are first elected as ordinary Members and then elected by the House to the offices. In most cases the Speaker will be a member of the governing party, where it has a majority. If a government is in the minority, it may seek to nominate a member or members of another party to the positions (to neutralise one or more opposing votes and preserve its majority). In most "Westminster-style" jurisdictions the Speaker and Deputies are expected to be non-partisan. One of the advantages of the procedure in the St Helena LegCo is that by not electing Councillors as Speaker and Deputy Speaker, all 12 Councillors are free to represent electors, without the Speaker and Deputy Speaker, being Councillors constrained in doing so.

99. In the absence of political parties in LegCo, and with a legislature of only 12, there are advantages in the current constitutional requirements being maintained.

100. With the forthcoming 2025 general election, and thereafter the election of a Speaker, and Deputy Speaker, there is the opportunity for a more comprehensive advertising and selection process. In 2021 the positions were advertised for a two-week period seeking "expressions of interest".

101. Although these are not public service positions in the technical sense, with the usual detailed job description, it might assist potential candidates and LegCo in determining who is best suited to the positions if a comprehensive description of the roles were to be developed, perhaps including:

- experience in calling, chairing and maintaining order in meetings, in the public, private, or not for profit sectors, especially in relation to Standing Orders, Codes of Conduct and related instruments,
- experience in dealing with disputes in meetings, and resolving them in an efficient and equitable manner, with clear, concise rulings,
- ability to demonstrate ability to work under pressure,
- representational skills to deal with the office of the Governor, Chief Minister, Ministers and LegCo, as well as visiting dignitaries,
- understanding of legal principles as they relate to legislatures, and the public sector,
- personal standards capable of satisfying the ordinary fit and proper person test,
- experience in managing employees, under direct control,
- likely time demands, remuneration, and other conditions of appointment,
- importance of impartiality.

102. The positions could be advertised in advance of the General Election, but necessarily applications cannot close until after the polls have been declared, in case a defeated candidate in the General Election wishes to stand as Speaker or Deputy Speaker. In any event applications should close soon after the declaration of the poll so that LegCo can make the necessary decisions as soon as possible to be able to convene.

103. In addition to the capacity building induction opportunities for all Councillors, there should be specific guidance provided to the Speaker and Deputy Speaker on their roles and responsibilities.

Recommendation 12 – role of Speaker and Deputy Speaker

104. We recommend that the Office of the Speaker, in conjunction with the Governor, Chief Minister and LegCo, develop a detailed job description for the positions of Speaker, and Deputy Speaker, which is made available with the advertisement inviting expressions of interest for the positions, together with a description of the recruitment process.

Public Accounts Committee

105. S. 69 of the Constitution provides for the establishment of a Public Accounts Committee (PAC), consisting of a chair and one other member who is not an Elected Member of LegCo, and three Elected Members of LegCo, chosen by LegCo. The chair is appointed by the Governor. The Committee is charged with examining the Annual Statement of Accounts, and a range of other financial papers. It is supported primarily by the Chief Auditor. It is empowered to summon witnesses and to require information.[26]

106. S.69(10) protects the independence of the Committee, providing that it "shall not be subject to the direction or control of the Governor, the Executive Council or any other person or authority".

107. Since 2021 the St Helena PAC has been a member of the Commonwealth Association of Public Accounts Committees, which is a valuable endorsement of its authority, and gives useful access to a community of experience.

108. In our discussions we found widespread agreement that PAC is doing a good job. We confirmed this with our own observations of the work of PAC. Its hearings were probing, detailed and nit-picking – precisely how a professionally run PAC ought to be. During our time on-Island, the Chief Auditor (who reports to PAC) produced a report on the fishing industry.[27] We were pleased to read that the Chief Auditor did not shy away from making criticisms of the Government. This is another important check and balance in the constitutional system and is an example of the system working.

109. We note, however that the PAC material on the SHG website is far out of date. This needs attention.

Recommendation 13 – Ministers not to be members of PAC

110. S.69(1)(b) of the Constitution provides that the membership includes three Elected Members of LegCo but does not bar Ministers from membership. In s.69A(2), however, there is an explicit bar to Ministers being members of select committees. **We recommend that Ministers should be ineligible to be members of the PAC.** This provision would mirror the existing provision in s. 69 for Select Committees. Ministers should not be members of a Committee whose purpose is to call Government to account

[26] What is known in UK practice as "PPR" – the power to summon "persons, papers and records".
[27] Audit St Helena External Auditors *Performance Audit: Fishing Operations Agreement* (March 2025).

Recommendation 14 – PAC chair appointed by LegCo

111. **As an important LegCo committee, the Chair of the PAC should be appointed by LegCo rather than by the Governor.** This is in line with the CPA Benchmarks 2021 Report recommendation 17.

Select Committees

112. S. 69A of the Constitution requires the Governor by Order "to make provision for the establishment of at least two Select Committees for purposes of scrutiny of sectors of Government activity". The membership, functions, responsibilities and procedures of the Committees are determined by the Governor. An Order of April 2022[28] establishes two Select Committees: Select Committee 1 covers Health and Social Care; Environment, Natural Resources and Planning; and Education, Skills and Employment. Select Committee 2 covers Treasury, Infrastructure and Sustainable Development; and Safety, Security and Home Affairs.

113. There are some oddities[29] about the arrangements. The Order (which is unnecessarily prolix) specifies things which in most other jurisdictions would be left to Standing Orders. The Committees are limited to "after-the-fact review"[30] so they are unable to look at a developing policy, perhaps where their input might be most useful. As is inevitable in a small jurisdiction, there are very limited Member (and support) resources, so the terms of reference of the two Committees are very broad indeed. This means that they must be highly selective about their choices of inquiry. We are not entirely sure why a Select Committee is limited to considering a maximum of two matters at any one time.[31] This seems an artificial way to limit the work of the Committees.

114. As we noted above, PAC has "PPR" – the power to summon persons, papers and records. **We see no reason why the Select Committees should not have a similar power, and we so recommend.**

Recommendation 15 – greater control by LegCo of Select Committees

115. The establishment of the Select Committees is welcome but, as they are essentially Parliamentary bodies, **there should be greater ownership and control of Select Committee activities by LegCo rather than by the Governor. As part of that change the purport of the Select Committees (Establishment) Order 2022 should be converted into a Standing Order of LegCo, much shortened and simplified in the process. The Committees should specifically be empowered to examine not only what has happened, and why, but also to be prospective in their inquiries.**

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[28] Select Committees (Establishment) Order 2022.
[29] There is also a drafting point: paragraph 4(1) refers to the Elected Members electing "a Chair of the Select Committees", yet immediately following (paragraph 4(2)) the reference is to "the Chairs", plural.
[30] Paragraph 3(2).
[31] Paragraph 5(2).

Parliamentary Privilege

116. In s.70 the Constitution provides that "the privileges, immunities and powers of the Legislative Council, the Speaker and its other Members may be determined and regulated by Ordinance but shall not exceed the corresponding privileges, immunities and powers of the House of Commons of the United Kingdom or of its members."

117. The St Helena Legislative Council Proceedings Ordinance[32] sets out the practical application of privilege in relation to LegCo and its proceedings. It is important to recall that "privilege" in the Parliamentary context does not mean some special advantage granted to a Parliamentary assembly and its members.[33] Perhaps most important in the modern context, privilege protects freedom of speech in Parliament. The House of Commons claimed its privileges over several centuries, but it was the Bill of Rights 1688/9 that enshrined freedom of speech in its Article IX, which stated that proceedings in Parliament may not be "impeached or questioned" in "any court or place out of Parliament".

118. The Ordinance is unnecessarily prolix, but it does helpfully import the effect of the UK Parliamentary Papers Act 1840 in respect of good-faith publication of extracts from Parliamentary proceedings, and the staying of legal actions where it is shown that a publication was "by order or under the authority" of a House of Parliament.

119. The Ordinance affords protection to proceedings of LegCo and of those of "a committee of the whole Council". The Standing Orders of LegCo distinguish between "a committee of the whole Council" and other committees (in practice, the Public Accounts Committee (PAC) and the two scrutiny Select Committees).

Recommendation 16 – PAC and Select Committees: protection of parliamentary privilege

120. We are aware of some uncertainty as to whether the proceedings of PAC and the scrutiny Select Committees are protected by Parliamentary privilege. **We are in no doubt that they should be, and we recommend that PAC and Select Committees should be protected by parliamentary privilege. At the same time the Proceedings Ordinance should be amended to make it clear that the protection of privilege extends to the working papers of the Committees (and of any LegCo committee subsequently created) as well as to papers held or created by a Councillor for the purpose of proceedings in the committees or in LegCo**.

121. It will remain essential to distinguish between events, words and materials which form part of proceedings and those which do not. For example, a media conference, even if held in the LegCo Chamber, is not protected, because it is not "a proceeding". Nor are our recommendations intended to give to Councillors any personal immunity separate from proceedings; they would be protected only when acting in their Parliamentary roles.

[32] Ordinance 10 of 1974.
[33] The word originates from *privata lex*, in other words, a separate legal jurisdiction.

Disabled access

122. ExCo and LegCo are held in the Council Chamber, up a flight of steps.[34] The Deputy Speaker (a wheelchair user) needs access to carry out her official functions of presiding at LegCo when deputising for the Speaker. Three years after her election, this is still not forthcoming.

Recommendation 17 – disability access to Council Chamber

123. On the public record the Speaker has stated that lack of disabled access to the Council Chamber "is a huge problem".[35] This needs to be fixed without delay. A Parliamentary assembly from which its own Deputy Presiding Officer (and disabled members of the public) are effectively excluded is open to serious criticism. The end of the present Deputy Speaker's term of office will not make this problem go away. This is an equality issue. **We recommend that step-free access to the Council Chamber should be a priority.**

Informal LegCo

124. Councillors are briefed on the content of Bills in what is termed Informal LegCo (sometimes termed info LegCo) in advance of the Bills being formally introduced into LegCo. This gives an opportunity for debate, although as Informal LegCo is held in private, the public are not informed.

125. We were permitted to attend a meeting of Informal LegCo. The public were not present at this, but several public servants had also been invited to attend and give evidence. The meeting we attended was presided over by the Speaker, but there was no Mace as the symbol of Royal authority. Informal LegCo seems to be used as a way for Councillors to be briefed by Ministers or the Public Service on forthcoming legislation or on other matters. We can find no reference to Informal LegCo in the Constitution or Standing Orders, and so we conclude that Informal LegCo is not LegCo within the meaning of the Constitution, with all that that entails. It is just a private meeting of people who all happen to be Elected Members of LegCo.

126. Informal LegCo may allow Councillors to be kept informed of what Ministers and the Public Service are doing, but the exclusion of the public from what might appear to be a sitting of LegCo seriously undermines transparency and accountability. It also heightens public concerns that decisions are taken behind closed doors.

127. Most, if not all, of what currently happens at Informal LegCo could take place at proper LegCo meetings. The most obvious example is debate and briefings about Bills. Explaining and justifying a Bill is a key component of the interaction between Ministers and Councillors and, indeed, the electorate, and it is vital that the public have access to this. Otherwise, they may well get the impression that Bills are rubber-stamped in a single sitting of LegCo. Ending Informal LegCo should not result in greater time spent by Councillors and Ministers in debates, but instead the debates will move to formal LegCo meetings.

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[34] On a few occasions LegCo has been held in Customs House or in the Court.
[35] LegCo meeting, 5 December 2024.

128. We were aware of concern that more LegCo meetings would take up considerable ministerial time, for example if each LegCo meeting for a Bill also involved additional question times. If this is a risk, then, as we note above,[36] Standing Orders could be amended to establish priorities of items of business.

Recommendation 18 – an end to Informal LegCo

129. **We recommend that all meetings of LegCo should be formal meetings, with full public access**.[37] If a meeting is held without any public access, it gives a strong perception – whether justified or not – that important decisions of the Elected Members are taking place behind closed doors. The essence of a legislature is a forum for public debate. Informal LegCo is, in effect private LegCo meetings and has little merit. This does not rule out briefings or discussions on matters of current concern. They could take place, but not within the LegCo structure.

Legislation and LegCo

Introduction of Bills

130. Under s. 73 of the Constitution, "any Member" of LegCo may introduce a Bill. We find it odd that this is not limited to "any Elected Member". Under s. 67, the AG is an *ex officio* member without a vote, and the Speaker and Deputy Speaker are appointed Members and do not have a deliberative or casting vote. **The AG, the Speaker and Deputy Speaker do not have a democratic mandate to introduce legislation. In general, this right ought to be reserved to Elected Members**.

131. However, in certain circumstances, such as consolidation Bills, or Bills relating to the running of LegCo, the *ex officio* Members ought to be able to introduce Bills. If there is a need for legislation on a matter which is the special responsibility of the Governor, this could be done on behalf of the Governor by an Elected Member, or the Governor could legislate directly, using the residual power to legislate for peace, order and good governance

Procedure and time limits for Bills

132. Standing Order 13 sets out most of the procedure for regulating the passage of a Bill through LegCo. Some of the cross references and headings within Order 13 seem a little muddled.

133. A Bill must be delivered to the Clerk 10 days before the day it is presented, but the Governor may sign a certificate of urgency to avoid this requirement. From a democratic perspective, it is not clear to us why the Governor (rather than an Elected Member) should have this function. Having an urgency procedure is sensible, as there may be circumstances where it is not feasible to deliver a Bill 10 days in advance. Although we did not see any evidence of this procedure being abused, as a

[36] Paragraph 123.
[37] There is of course the power to exclude the public in cases of disruption, or the need to discuss personally identifiable or other confidential material.

matter of good practice there must be safeguards. For example, in the UK, although the use of urgent procedures was justified at the start of the Coronavirus pandemic, their continued use throughout that pandemic was heavily criticised.[38]

134. There are three stages for a Bill passing through LegCo. Stage 1 is where the Bill is presented. The Member moving the Bill may give a short exposition of the Bill and there may be a debate on its broad principles (in effect, a "second reading" debate). Stage 2 is Committee Stage, which may either be a Committee of the whole Council, or a Select Committee. In Stage 2, the detailed provisions of the Bill are considered, which will include debate on each clause (or groups of clauses), and the Bill may be amended. Stage 3 is the final stage and is for consideration by the full Council. Debate at Stage 3 is on the broad principles of the Bill as it then stands (in effect, a "third reading" debate). Amendments are allowed at this stage only for correction of oversights and errors, and material amendments may not be moved.

135. There is no minimum time period that must elapse between different stages of a Bill. So, a Bill can pass all three stages in one sitting. We witnessed two Bills passing through all stages in two days (although the Bills had already been discussed in Informal LegCo). In most jurisdictions there are minimum time periods between different stages (although these may be overridden in case of need or urgency). For example, in the Northern Ireland Assembly there is a minimum of five working days between each stage.[39] There are several reasons for minimum time periods:

- members have time to consider a Bill properly and the process is open to external (non-Parliamentary) information and scrutiny,
- technical or policy defects can be properly scrutinised and remedied,
- where Bills are amended as they pass through the legislature, there is time to make the necessary consequential changes to make sure a Bill works as a whole.

Recommendation 19 – changes to the certificate of urgency procedure

136. **We recommend that a certificate of urgency should be signed by the Chief Minister rather than by the Governor. The certificate would need to state that the Chief Minister is of the opinion that, for reasons of urgency (which must be stated explicitly), it has not been possible to deliver the Bill in advance**.

137. **We further recommend that the Speaker must be satisfied of the need for urgency before the certificate becomes effective**. This prevents the decision being unilateral and means that there must at least be some demonstrable grounds for it, agreed by a third party. A similar procedure would apply if the periods between Stages 1 and 2, and 2 and 3 were to be shortened.

[38] Russell, Fox, Cormacain and Tomlinson, "The marginalisation of the House of Commons under Covid has been shocking; a year on, parliament's role must urgently be restored" (The Constitution Unit, April 2021). See also House of Lords Secondary Legislation Scrutiny Committee, especially 19th Report of Session 2019-21, HL Paper 84.
[39] Standing Order 42(1) of Standing Orders of the Northern Ireland Assembly, exceptions do exist, for example for accelerated passage in certain cases.

Recommendation 20 – minimum time periods between stages of a Bill

138. **There ought to be at least one week between Stage 1 and Stage 2, and at least one week between Stage 2 and Stage 3**. This will allow time for proper scrutiny and will keep the public better informed. Use of a certificate of urgency could be extended to allow these minimum periods to be bypassed in exceptional circumstances.

Commencement

139. A Bill becomes law on the date of assent. Becoming law means it is now an Ordinance; it is now official and is on the statute book. At this stage it is still not binding – it does not create binding legal rights and obligations. It is only binding when the Ordinance is commenced (sometimes referred to as coming into force). It is commenced when it is published (put on the public notice board in the Castle) or on the date specified on the face of the Ordinance.[40] The normal practice in St Helena is that a commencement date is not specified on the face of the Bill. This reduces legal certainty. It also means that citizens do not know when a law, once approved, is to apply to them.

140. There is a problem with Bills that have been passed, have been assented to by the Governor, but which have not been brought into force. This makes them laws in limbo – on the statute book but not applying in real life. The most glaring example of this is the Road Traffic Ordinance 2016. It has been a law now for nine years, but it is still not in force. One reason advanced for this was that the Ordinance, even though passed, was still deficient. We did not find this argument convincing. If the Ordinance is indeed deficient, then LegCo should be invited to consider supplementary or amending provision. The current situation appears to second-guess LegCo's legislative function.

Recommendation 21 – commencement date on the Bill

141. **The commencement date should appear on the face of the Bill**.

Private Members' Bills

142. Any Member of LegCo can introduce a Bill.[41] In practice, most Bills are introduced by Ministers, but the option is open for Councillors also to introduce a Bill, generally referred to as a Private Member's Bill (PMB).[42] In the current session, two PMBs have been introduced: one was withdrawn following discussion with the AG, and the other, the Liquor (Amendment) Ordinance 2024, was enacted. Given that Councillors are in the majority in LegCo, it is a little surprising that there have not been more PMBs.

143. The CPA Benchmarks 2021 Report contemplated Councillors having the power to introduce PMBs on matters of conscience. There is nothing stopping this happening. PMBs on matters of conscience are classic territory in the Westminster Parliament (abortion, death penalty, assisted

[40] s. 6, Interpretation Ordinance 1968.
[41] S. 73 of the Constitution.
[42] In other jurisdictions, they can be referred to as non-executive Bills, or backbench Bills.

dying, and so on). In the devolved jurisdictions of Scotland, Wales and Northern Ireland, there is a much more vibrant PMB culture with many Bills being introduced and a sizeable number passing, and not just on matters of conscience. In these jurisdictions, there is a real sense that backbenchers can change the law, and that helps to increase the democratic legitimacy of those legislatures. The Liquor (Amendment) Ordinance, introduced as a PMB, is a good example of Councillors in St Helena having a policy with enough support to get it onto the statute book.

144. There are several challenges with PMBs. First, they are resource intensive. They require considerable research and then legislative drafting. Second, there is the risk that they can undermine or work at cross purposes to the government's legislative programme. Third, an ill-conceived or rushed PMB could damage the integrity of the statute book. In most jurisdictions, governments resent legislatures taking the legislative initiative and interfering in "their" work. In LegCo, with an inbuilt majority for Councillors over Ministers, PMBs could easily swamp LegCo and lead to the committee system of government by the back door.

145. It follows that there needs to be a means of rationing PMBs so that they are neither too demanding of resources nor profligate with the time of LegCo. There are several models for rationing:

- The Speaker operates as a filter, but this could require a political assessment rather than a procedural judgement and therefore may not be appropriate,
- a Motion to bring in a PMB would establish whether there was sufficient support to proceed. Such a Motion could be amended to limit the scope of what was proposed, or negatived, thus killing the proposal; and it would allow the Chief Minister to express the view of the Executive at that stage,
- a simpler approach would be to hold a ballot, open to all Councillors. Two or three names could be drawn (to avoid holding another ballot should a Councillor drop out), and those Councillors would be able to introduce a Bill of their choice. Standing Orders might prohibit one Councillor from taking over a PMB introduced by another Councillor and could make provision for time available. Ambition would be limited by resources available, and by competition from Bills put forward by the Executive,
- alternatively, every Councillor could be allocated one slot per term to introduce their own PMB if they wished.

146. Whichever option is decided upon, there would need to be some basic quality control threshold so that only feasible and well worked-out policies would be eligible to form the basis of a PMB. We invite the Members of LegCo to consider which procedure they wish to adopt.

147. The legislative drafting for PMB could be provided by AG Chambers, but (depending upon volume) this could seriously affect its drafting capacity. The AG Chambers did provide drafting assistance to the recent PMB on liquor licensing. Alternatively, drafting could be provided by the Public Solicitor or contracted out to an independent panel. The panel approach is the model used in Wales and Northern Ireland, where a public tendering process is run to select a panel of consultant legislative drafters, who may be called upon from time to time to draft PMBs. Use of the Public Solicitor or contracting out would require strong checks on the quality of the legislative drafting services available. It would also need to fall within the separate LegCo budget.

Recommendation 22 – Private Members' Bills

148. **We recommend a more systematic and formal approach to PMBs which would have the effect of facilitating greater engagement by Councillors. This would include a system for rationing PMBs and the agreement of the Attorney General to assist in their drafting, or a formal process for tendering out for drafting**.

Assent by Governor

149. After being passed by LegCo, a Bill does not become law until it has been assented to by the Governor.[43] The Governor has formal powers in the Constitution to delay giving that assent if a Bill is inconsistent with a partnership value, breaches the Constitution or affects the privileges of LegCo.[44] Other than in these situations, assent by the Governor should be automatic. This equates to the position in the UK where Royal Assent to legislation has been long been a formality.

150. However, we observed that in limited cases an unfortunate practice whereby assent by the Governor was treated as a matter for discussion by ExCo, the implication being that the Governor would only grant assent on the advice of ExCo. We think that this has resulted from a misunderstanding of the Constitution after the move to the Ministerial system. The Governor's function in s. 74 of the Constitution should be for the Governor alone, and not for the Governor acting on the advice of ExCo. As stated explicitly in s. 74(2) this decision is for the Governor "acting in his or her discretion".

Recommendation 23 – assent solely a matter for Governor

151. **We recommend that assent to a Bill ought to be solely a matter for the Governor**. The Governor's role here is a constitutional check to ensure the Bill is in accordance with the Constitution, and this should be done without recourse to ExCo. It is not appropriate for the assent function to become another forum for Ministers to discuss the merits of a Bill – this would be to usurp the constitutional function of the legislature to pass legislation. There is long-established case law in the UK which states that once Parliament has enacted legislation, it is not for the executive to deny that legislation having effect.[45]

Delegated Legislation

152. Delegated legislation (sometimes called secondary legislation) is law at a level lower than primary legislation but made under the authority of that primary legislation. The most common kinds are Orders and Regulations. In Westminster-type Parliamentary institutions, delegated legislation is an issue of importance, and often of contention. There can be objections to delegated legislation for many reasons, for example, if the delegated legislation goes beyond what was authorised by the primary legislation, or if it would be democratically appropriate for primary legislation to be used.

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[43] s. 74(1) of the Constitution.
[44] s. 74(3) of the Constitution.
[45] *R v Secretary of State for the Home Department, ex parte Fire Brigades Union* [1995] UKHL, *RM (AP) v The Scottish Ministers* [2012] UKSC 58.

153. Another area of contention is that the degree of scrutiny of delegated legislation is lighter than that of primary legislation, making it an option more attractive to Government. In the UK it is very rare for Parliament to reject a piece of delegated legislation. From time to time, Parliament may pick up a flaw in delegated legislation, and the Minister responsible will undertake to rectify that flaw (perhaps by resubmitting it with the flaw corrected).

154. The St Helena Constitution says little about primary and secondary legislation; s. 60 says simply that "Subject to this Constitution, the Legislature may make laws for the peace, order and good government of St Helena". S.117 extends the power to make "a subsidiary instrument" to the amending or revoking of that instrument, defined as "any proclamation, regulation, order, rule, or other like instrument having the force of law". The Standing Orders of LegCo deal with Bills[46] but not with delegated legislation.[47]

155. It is therefore the case that LegCo has little involvement with, and no power in respect of, delegated legislation. In terms of democratic engagement with a potentially significant area of lawmaking, this is not satisfactory. As a matter of principle, the legislature ought to have a role in the making of delegated legislation.

156. As we note in recommendation 25, there is no accessible list of delegated legislation made each year. This is problematic as it means that Councillors do not know what laws are being made in their name, and citizens do not know what laws apply to them.

157. There are a number of different models in other jurisdictions for scrutiny of delegated legislation:

- legislation laid before the legislature for it to be noted,
- approval of legislature required before delegated legislation can be made (normally called the affirmative procedure),
- power of legislature to reject delegated legislation (normally called the negative procedure),
- a delegated legislation committee of the legislature to consider all delegated legislation,
- an Examiner of delegated legislation[48] to alert and advise the legislature on the legal importance of delegated legislation.

Recommendation 24 – LegCo to consider delegated legislation

158. **LegCo should have a role in the making or consideration of delegated legislation. The least burdensome procedure is the negative procedure, so that delegated legislation is laid before LegCo and they have an opportunity to reject or annul it.** Amendment of delegated legislation introduces real procedural complexity and should be avoided. Legislation is delegated so that Ministers are better able to make decisions on technical matters, or points of detail, but LegCo still ought to have the right to scrutinise it.

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[46] Order 12.
[47] There is a limited power in s. 32A of the Interpretation Ordinance 1968 for the AG to rectify legislation if there are printing or clerical errors in it. This does not equate to proper scrutiny of delegated legislation.
[48] See for example Standing Order 42 of the Standing Orders of the Northern Ireland Assembly.

159. We are aware of the reasonable concern of Ministers that this might have a sclerotic effect on business; and, particularly, that if additional sittings were to be required, this might allow Elected Members further rations of their three questions to the Government. Experience from other jurisdictions suggests that the effect would be modest, and amendments to Standing Orders could deal with other problems.

Legislative Programme for Government and Legislative Output

Access to legislation

160. The St Helena Government website contains a page entitled Legislation of St Helena.[49] It is stated that this is the Revised Edition of the Laws, 2017, as prepared and updated in 2017 by the then Law Revision Commissioner for St Helena. It contains the following subdivisions:

- Alphabetical list of Ordinances with links to their full text (not containing any Ordinance passed after 2022).
- Legislation listed by subject matter, including relevant delegated legislation (not containing any legislation passed after 2022).
- Chronological list of Ordinances (not containing any legislation passed after 2022).

161. In the News section of the St Helena Government website, there is a reference to Gazettes. Clicking on the Gazettes gives a list of all Gazettes by year. It is then possible to go to Extraordinary Gazettes by year. In amongst the various official announcements some of these Gazettes contain primary and secondary legislation.

162. According to the information we have been provided with, and excluding appropriation Bills, 15 Bills have been enacted by LegCo since the start of the Ministerial system in October 2021. Seven of those Bills have been brought into force. This does not include any figures for delegated legislation.

163. The rule of law requires access to legislation.[50] The classic legal maxim is that ignorance of the law is no defence, but this works only if those subject to the law have a chance actually to read it. Those we interviewed suggested that between two and five Bills had been passed since the start of the Ministerial system, so there is clearly some confusion about legislative output.

Recommendation 25 – online access to up-to-date legislation

164. Access to legislation is vital. **We recommend that the official Government legislation website be brought up to date with the full list of all Ordinances and all delegated legislation**

[49] https://www.sainthelena.gov.sh/government/legislation/laws-of-st-helena/
[50] Tom Bingham, *The Rule of Law* (Penguin 2011)

in force. This information should be kept up to date so that each time a new piece of legislation is made it is added to this website.

Legislative, and drafting priorities, and resources

165. The volume of output of Bills passed by a legislature is not always a sign of quality. However, the level of Bills passed in St Helena is quite low, given the strong demand we heard expressed for legislation on multiple subjects. We encountered a variety of views on the reasons for the low level of Bills passed. These included:

- AG Chambers had insufficient legislative drafting resources,
- there was no prioritisation of Bills (either by Ministers or AG Chambers),
- policy decisions were not being made, meaning that no, or inadequate, instructions were sent to AG Chambers,
- a reluctance to pass "partial" Bills dealing with parts of a problem, with a desire to wait for a comprehensive Bill dealing with all of the problem,
- policy decision-making did not start straight away after the election, with Ministers instead consulting with the public on their vision before starting to develop policies,
- there were no political parties with mandates before the election – so the incoming Government needed time to develop its legislative and financial vision and priorities.

166. We cannot make a finding on the reasons for the lack of legislative output, other than to say that there may be an element of truth in all of them. It is certainly clear that, until recently, there was only one legislative drafter in AG Chambers, and that was a drafter working remotely. It is impossible for one drafter to draft the entirety of primary and secondary legislation for a jurisdiction. There is now one on-Island drafter, one remote drafter, and from time to time a contract drafter is engaged to work on a specific Bill.

167. According to OSCE guidance:

> "One very important element of effective lawmaking is adequate prospective legislative planning. Rather than reacting hurriedly to specific problems, and thereby unnecessarily accelerating the legislative process (leading to uneven results in terms of quality of legislation), more long-term planning of key legislative initiatives results in qualitatively better, more sustainable legislation. It is customary for states to have legislative plans that are usually drafted and published by both the government and the parliament. These plans, when properly prepared and implemented, adequately organize and space out legislative projects or annulments of existing legislation. In principle, they allow governments and parliaments and other bodies and stakeholders participating in the lawmaking process to look ahead and coordinate and organize their workloads accordingly."[51]

168. We thought that decision-making on Bills was too reactive, and too much a matter of firefighting in response to immediate problems. The process did not involve enough long-term

[51] Office for Democratic Institutions and Human Rights, Organization for Security and Co-operation in Europe *Guidelines on Democratic Lawmaking for Better Laws* (2024).

strategic thinking about what Bills are necessary. It was disappointing that, after four years of government, there was still no published legislative programme setting out what Bills Ministers proposed to introduce into LegCo over the life cycle of the Government.

169. If the Chief Minister were to announce annually at the start of every LegCo session what the legislative priorities of the government were, this could readily translate into priorities and workplans for the PDs and their staff, as well as being reflected in the Budget and financial priorities.

Recommendation 26 – clearer ownership of Bills

170. **Every Bill, other than a Private Member's Bill, needs to be "owned" by a named Minister.** Ministers are ultimately responsible for all decisions taken on a Bill, whether the Bill is drafted, and whether and when it is introduced into LegCo. Although some of the detail may be delegated to public servants (in developing the policy) and the drafters of the legislation, it always remains the Minister's Bill. In particular, it should be abundantly clear when the Minister has completed the policy decisions and responsibility for the Bill has passed to the Attorney General for drafting the Bill. It needs to be equally clear when the drafting process is completed, and the Bill is transferred back to the Minister. However, even though the Bill may temporarily be the responsibility of the AG (during the drafting phase), the ultimate Bill owner is always the Minister.

171. **The ministerial owner of the Bill always needs to be clear. The name of the member who introduces a Bill should be included on the face of the Bill.** This will demonstrate ownership of a Bill by the person who introduces it. Normally, this will be the Minister, and the name should be followed by the Ministerial title (for example, Minister for Environment, Natural Resources, and Planning). The Minister's name would not appear on the Bill once it becomes an Ordinance.

Recommendation 27 – legislative programme agreed and published

172. It is for the Cabinet to determine the content of the legislative programme, with input from the AG in terms of resources, capacity and flow of legislation, and with the Governor in a consultative role**. After the next election, the Cabinet should prioritise determining a legislative programme, preferably for the full term but, if not, then for the first 12 months.** The legislative programme should be shared with LegCo and then published. The legislative programme needs to be determined as soon as possible after the new Cabinet is appointed. The Chief Minister and Ministers should ensure that the community is aware of the Government's legislative and financial priorities in the year ahead. In turn, the determination, and announcement of the Government's legislative programme can then be reflected in the priorities of PDs and their employees, as defined in a Service Level Agreement (SLA) between the Minister and the PD.

Recommendation 28 – prioritisation of Bills

173. **Cabinet needs to agree on the prioritisation of Bills.** It is hard to be dogmatic about the number of Bills capable of being passed in a year as it depends on the length of individual Bills. The Cabinet will therefore need to make difficult decisions on which Bills take priority. Prioritisation is a political decision, although the AG will have some input in terms of setting out what is feasible to be drafted, and how long it will take.

Recommendation 29 – greater drafting resources

174. St Helena needs a bare minimum of two full-time drafters. Almost inevitably, these will be TCs. Ideally both should be on-Island, but we appreciate that this is not always possible. An on-Island drafter makes working relationships easier and allows for informal conversations which can sometimes be very productive. More important, it means that there is a drafter that can be contacted straight away if a problem arises, as well as there being a drafter who knows the context of the island straight away without having to be briefed.

175. **We recommend that, if resources permit, the current staffing of one on-Island and one remote drafter be augmented by a second on-Island drafter.** This will allow for greater resilience, for example if one drafter is ill, or on holiday or otherwise unavailable.

176. If it is not possible to have a second on-Island drafter, it may be possible to supplement drafting services either with a remote drafter (as a permanent employee) or by contracting out specific drafting jobs remotely. Although feasible, this is not ideal. Contracting out specific drafting jobs only works if the job is relatively large and the contractor is an experienced drafter, preferably with experience of working with small jurisdictions within the common law (and British) systems.

English Law (Application) Ordinance 2005

177. The English Law (Application) Ordinance 2005 is a rather unusual law of St Helena. It broadly does three things.

178. First, it allows for Acts of Parliament (i.e. the UK Parliament) to apply in St Helena. This procedure is set out in ss. 5(c) and 6 of the English Law (Application) Ordinance 2005. The power belongs to the Governor in Council.[52] The Governor may exercise this power by Order (a type of secondary legislation). The Order may direct that any Act of Parliament which does not already apply in St Helena, is in force in St Helena. The Order may also modify the effect of that Act as it applies in St Helena. That Order must be laid before LegCo and does not come into force until ratified by LegCo. These Orders are referred to as English Law Application Orders. As of 2017, there were eight Application Orders.

179. Second, the English Law (Application) Ordinance 2005 provides that all English law in force in England in 2005 ("adopted English law") applies in St Helena, subject to any qualifications or modifications that are rendered necessary by local circumstances. This is problematic from the perspective of legal certainty as it is very difficult for anyone to know what the law of England was in 2005, and what modifications are necessary in order for that law to apply in local circumstances. Furthermore, although it is reasonable to argue that the reference to the law in 2005 is non-ambulatory (meaning that it does not change if the UK changed a law post 2005), this cannot be said with absolute certainty.[53] This provision is not the same as post-colonial circumstances where a colony "inherits" laws that were imposed by the mother country. Instead, this provision means that at a pen-stroke in 2005, all English law was automatically imported into St Helena. **Great care**

[52] Governor in Council means the Governor sitting with the Executive Council, by virtue of s. 3(2) of the Interpretation Ordinance 1968 and ss. 43 and 44 of the Constitution.
[53] The Interpretation Ordinance 1968 could be used to argue that a reference to a law in 2005 must be taken as a reference to that law as amended post 2005.

would need to be taken in applying this provision to current circumstances for the simple reason that it would be very difficult to know precisely what English laws apply, and what the "necessary" modifications would be.

180. There is a power to disapply Acts that would otherwise automatically apply in St Helena. As of 2017, that power had been exercised twice, once in relation to the Human Rights Act 1998,[54] and once in relation to the Freedom of Information Act 2000.[55] This throws up a further complication as it could be argued that between 2005 (when the Ordinance was made) and 2010 (when the Human Rights Act was disapplied) that the Human Rights Act 1998 was part of the law of St Helena.

181. Third, the Ordinance also obliges the AG to report to LegCo each year on all Acts of Parliament passed for England with a short description of the Act and whether the procedure for adopting it will be used. This obligation has fallen into disuse and not without good reason. The job of summarising the legislative output of Parliament for a year and then going through that output to decide what provisions of what Act ought to apply in St Helena, and to set out the modifications necessary to make them work in St Helena, would be a Herculean task.

Recommendation 30 – greater use of Application Orders

182. **This first power (to pass an Application Order to make an Act of Parliament apply in St Helena) is useful and should be used more often.** It provides a relatively quick way to bring some laws into force in St Helena. It also gives legal certainty as first, there is an Application Order stating which Act applies in St Helena, and second, the Application Order sets out the modifications which are necessary to make the Act apply. That way, the citizen can see what Act applies and can read the modifications that make it apply correctly.

183. However, this is not a magic bullet. Sometimes the modifications required to fit a law to St Helena will require major policy consideration and legal work. This procedure will be a help only in a limited number of cases, of which the most obvious is criminal law. The elements of a crime will be virtually identical in the UK and St Helena (the physical things comprising a crime, the mental element, the defences, the exceptions and so on). The only modifications will be to set the penalty for St Helena, and possibly to ensure that the police have the necessary powers (of arrest and so on). For example, "upskirting" was made an offence in the UK under the Voyeurism (Offences) Act 2019. If there were an intention to criminalise this in St Helena, the legislation could be enacted relatively quickly.

Codes of Conduct

Ethical behaviour in public office

184. S.71 of the Constitution provides that there shall be two Codes of Conduct, one applying to Ministers and one to the Speaker and other Members of the Legislative Council. In addition, there is a Code of Conduct for the Public Service.

[54] English Law (Human Rights Act) Order, 2010.
[55] The Freedom of Information Act (Dis-application) Order 2005.

The Ministerial Code of Conduct

185. The first General Election under a Ministerial system of government took place on 13th October 2021. However, the Ministerial Code of Conduct was not approved until 16th December 2022. This delay was regrettable, although perhaps understandable given the need for transition to the Ministerial system from the Committee system which it replaced, and the requirement to establish methods of working under the new system.

186. The Ministerial Code of Conduct is relatively lengthy. It is both procedural and behavioural. The nearest United Kingdom equivalent might be a combination of the Cabinet Manual and the Ministerial Code. In matters of propriety, the Ministerial Code rests heavily upon the Seven Principles of Public Life: Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership.[56] This is welcome.

187. The Code provides that the Chief Minister shall be "politically, the ultimate judge of the standards of behaviour and performance expected of a Minister and the appropriate political consequences of a breach of those standards".[57] In the absence of an independent figure[58], this is a reasonable arrangement.

188. When a breach of the Code is alleged, the course of action to be taken against the Minister is to be determined solely by the Chief Minister after consultation with the Attorney General or the Speaker's Office as the Chief Minister sees fit in the circumstances.[59]

189. The drafting of these provisions is infelicitous. At the stage of an allegation only (before mention of any investigation), the Chief Minister is required to determine a course of action to be taken against [*sic*] that Minister. It is only if the Chief Minister considers that the alleged breach warrants investigation that he or she may request that the [alleged] breach be investigated by the Speaker's' Office. It is not clear who would be the responsible individual in those circumstances; whether the Speaker in person or someone authorised by him or her; and it is also not clear whether the necessary resources and expertise to investigate would be available. An alternative would be for such investigations to be carried out by the AG.

The Legislative Council Code of Conduct

190. This Code of Conduct was approved by LegCo on 16th December 2022, the same day as the Ministerial Code, and nearly 14 months after the General Election. It is less successful than the Ministerial Code and needs a major overhaul.

191. Good codes of conduct, whether in Parliamentary, local government, professional or commercial institutions, share characteristics. They should be clear, easily understood (remembering that codes are used by electors as well as the elected); they should have straightforward provisions for interpretation in cases of doubt; and those to whom they apply should be able easily to summarise the requirements of the relevant Code.

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[56] Known as "the Nolan Principles" and first set out in the first Report of the UK Committee on Standards in Public life, chaired by Lord Nolan, 31st May 1995.
[57] Paragraph 1.7 (b).
[58] See, in the UK, Sir Laurie Magnus CBE, the Independent Adviser on Ministerial Standards.
[59] Paragraph 1.5.

192. The LegCo Code falls short in several respects. It is 16 pages long (seven pages longer than the previous edition); it is over-drafted, and in a legalese style when what is needed is plain English.

193. The Code quotes the Seven Principles of Public Life (but without attributing them); it confuses registration and declaration of interests (despite the attempt made in paragraph 6); and it has some impractical provisions (not reading papers before coming to a meeting is a breach of the Code and presumably could give rise to a formal complaint).[60] There is no separate application to the Deputy Speaker, and so uncertainty as to whether the Code applies to that office because the holder is a Member. But if that is the case, why specify the Speaker, who is also a Member? The enforcement provisions are a touch optimistic; a robust investigation of an alleged breach, especially in heated personal or political circumstances, can be challenging, and the knowledge, investigative skills and experience required of members of the Panel of Investigators may not be readily available.

194. In circumstances which may be technically demanding, the possibility of supplementing the investigative process with off-island resources (presumably remote) might be considered.

The Public Service Code of Conduct

195. The Public Service Code of Conduct, and Code of Ethics seems to have been adopted in 2013, and thus, well before commencement of the Ministerial system of government. Although there is a notation proposing a review in 2014, no updated version seems to exist. The Codes are comprehensive in addressing a range of issues but would benefit from a comprehensive review to ensure they are contemporary and reflect the context of the Ministerial system of government. In many cases the Code references other related documents such as Drugs & Alcohol Policy and Procedure, Policy on Smoking in SHG Premises & Vehicles, Dress Code Policy, Procedure Relating to use of Government Vehicles, Fraud & Related Negligence Procedure, and Policy for the use of Information Technology.

196. The Code requires public servants to “Never accept gifts or benefits from a third party that might reasonably be seen to compromise their personal integrity or judgement, and report offers of such inducements to a relevant senior manager.” In some circumstances, the offer of a coffee and cake over a meeting at an external venue, might be reasonably accepted, in others not. In many jurisdictions there are gift reporting monetary thresholds, and prohibited gift monetary limits. In the planned review of the Code consideration could be given to requiring public servants to declare offers of gifts which they declined, to ensure openness.

Recommendation 31 – revision of Ministerial Code, redrafting of LegCo Code, review and redrafting of Public Service Codes

197. There is no evidence that misconduct of a sort to breach a code of conduct is a problem. However, it is good practice to ensure that codes of conduct are clear and fit for purpose and that they are regularly reviewed**. When opportunity permits, aspects of the drafting of the Ministerial Code might be tidied up. Well before that, the Code of Conduct for the Legislative Council should be completely redrafted with the aim of securing brevity and clarity. This should be done by the new LegCo. The Public Service Code of Conduct needs to be**

[60] Paragraph 6.7 (b).

updated. It is important that Codes of Conduct are regularly reviewed, particularly as they relate to conflicts of interest, to ensure relevance to the law and contemporary standards and expectations.

Conflicts of Interest

198. It is important to maintain integrity in the public sector by effectively managing conflicts of interest – instances where a person's personal interests overlap, or may be perceived to overlap, with that person's public duties. In a small jurisdiction, such as St Helena, conflicts of interest will be inevitable. In many cases, a decision-maker will have a personal, financial or social connection (either direct or indirect) with those affected by that decision.

199. Conflicts of interest are not necessarily wrong or unethical. Where they may pose a problem is when they are poorly identified and badly managed by individual officers and authorities. This has the potential to undermine the decisions of authorities, waste public money, damage reputations and erode community trust.

200. The Codes of Conduct applying to Ministers, Councillors of LegCo, and public servants, contain varying provisions relating to conflicts of interest:

- Ministers, including the Chief Minister, are bound by the Ministerial Code of Conduct which addresses conflicts of interest at General Principles g., h., and by reference at other parts.
- Members of the Legislative Council are bound by the LegCo Code of Conduct which addresses conflicts of interest at Part 6: Rules of Conduct:
    - Rules of Conduct,
    - disclosure and publication of interests,
    - use of public property,
    - use of public information, and
    - inducements,
- Public servants (and consultants providing a service to government) are bound by the Code of Conduct, and the Code of Ethics (2013) which addresses:
    - gifts
    - standards of public service,
    - secondary employment,
    - disclosures, and procedures relating to conflicts of interest, and
    - use of information technology.

201. Sound management of conflicts of interest involves:

- building cultures that prioritise integrity,
- a shared understanding of what conflicts of interest are, the risks they pose and the need for them to be actively identified, declared and managed,
- robust policies and processes to support officers to identify and declare conflicts of interest, and ensure they are appropriately managed,

- managers enforcing policies and supporting declarations through regular discussions with officers about potential conflicts of interest, and
- continuing monitoring and evaluation of conflicts of interest.

202. Conflicts of interest capacity development/training should address:

- financial, indirect, or nonfinancial matters,
- gifts,
- partiality.

203. Councillors, Ministers, and public servants should be provided with the relevant requirements of their Code of Conduct, its application, and examples of what might constitute a conflict of interest, how it should be disclosed and, having done so, how it should be addressed.

Recommendation 32 – further training on conflicts of interest

204. Capacity development of Councillors following the 2025 elections, as part of embedding the Ministerial system, should include a module on identifying, disclosing and addressing conflicts of interest, under the LegCo Code of Conduct. Capacity development of Ministers following their appointment after the 2025 elections should include a module on identifying, disclosing and addressing conflicts of interest, under the Ministerial Code of Conduct. All public servants should undertake training on identifying, disclosing and addressing conflicts of interest, under the Code of Conduct.

The Attorney General

Attorney General (AG) as legal adviser

205. Under s. 46 of the Constitution, the AG is the principal legal adviser to the government and is appointed by the Governor. The AG is required to act independently and "shall not be subject to the director or control of the Governor, the Executive Council, or any other person or authority".[61] The AG has express powers for all criminal prosecutions, as well as being an *ex officio* member of LegCo and ExCo.[62] Some of the functions of the AG may be exercised by the Solicitor General.[63]

206. In practice, the AG is responsible for all legal services required by the Governor, Ministers, LegCo and the Public Service. This comprises:

[61] s. 46(8) of the Constitution.
[62] It may be worthwhile amending the Criminal Procedure Ordinance 1975 to confirm the primacy of the AG in decisions to charge a person with a criminal offence.
[63] Law Officers Ordinance 2013. At present, there is no Solicitor General.

- constitutional advice,
- other legal advice,
- criminal prosecutions,
- civil litigation on the part of the Government (commercial, family etc.),
- general legal services (contracts, land transfers and so on),
- legislative drafting services.

207. In most jurisdictions, these legal services would be provided by separate legal agencies connected with the Government. For example, in the UK, the Attorney General is the legal adviser to government, the Director of Public Prosecutions is responsible for nearly all criminal prosecutions, the Office of Parliamentary Counsel is responsible for legislative drafting, and the Government Legal Services is responsible for legal advice, civil litigation, commercial contracts and so on.

208. The rule of law places a high premium on the independence of the chief law officer giving independent legal advice to government,[64] and on the autonomy of the prosecution service.[65] Professional legal standards require all government lawyers to provide high quality independent legal advice. Legislative drafters have a particular responsibility for protecting the integrity of the statute book and the rule of law.[66] However, this does not mean that government lawyers and legislative drafters are free to determine their own course of conduct. They are also public servants and are obliged to assist the government in delivering its programme for government.

209. We ascertained that the AG is free to give independent legal advice to Government and that prosecutions are carried out without political interference.

210. Some stakeholders thought that difficult decisions were passed on to the AG by Ministers as a way of avoiding taking responsibility. We have no evidence that that is the case. Any difficulties by Ministers in securing drafting priorities at the office of the AG should be addressed through a clear legislative programme and priorities, as advised by Cabinet, and via ExCo.

211. The then AG resigned during our first visit to the Island (December 2024), stating that the position of AG was “progressively untenable”, and the role was “unsustainable”. We were not party to the reasons for that resignation and have no comment to make on it.

212. **An independent chief legal officer is a key check and balance in any system of democratic governance. Particularly when it comes to constitutional law issues, the AG needs to give the right legal advice, not the advice that clients wish to hear. This means advice without direction or control by any person**.

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[64] See the discussion at pages 122 to 125 in Tom Bingham, *The Rule of Law* (Penguin 2011) on the role of the AG giving advice to the UK Government on the invasion of Iraq.
[65] Venice Commission, Rule of Law Checklist, paragraph 90.
[66] Ronan Cormacain, *The Form of Legislation and the Rule of Law* (Hart 2022), Peter van Lochem, *Legislation against the rule of law* (2017) 5 Theory and Practice of Legislation 95, Ronan Cormacain, *Legislation, legislative drafting and the rule of law* (2017) 5 Theory and Practice of Legislation 115.

Recommendation 33 – provision (but not content) of legal services is subject to direction

213. **The content of legal advice must always be independent and not subject to direction or control.** However, subject to resources being available within AG Chambers, the AG must provide the legal services required by government. This includes general legal advice, litigation, legislative drafting, and the full range of commercial and other legal services (including preparing contracts and conveyancing). The AG must be free as to the content of that legal advice and legal services, but not free as to whether the service is provided. This requires a discussion between AG, ExCo and the Governor about resources, planning and capacity. **This is a difficult balance to strike; the AG is an officer of the Public Service under the Constitution and ought to assist in the delivery of the Executive's priorities, but at the same time the AG must be free to give legal advice, even if this is not wanted. It would be helpful if this nuance was reflected in the Constitution**.[67]

Recommendation 34 – Chief Minister to have role in appointment of AG

214. At present, the AG is appointed by the Governor with the approval of the Secretary of State.[68] As the AG is the legal adviser to the government**, the Chief Minister should have a role to play in this appointment. This should be a consultative role, rather than a decision-making role.** It is vital to maintain the current position that the AG is not a political appointment.

The Public Service

Function and management of the Public Service

215. The core function of the Public Service is serving the executive authority, as represented by Ministers and Governor. The Public Service are to act independently and impartially, and that independence and impartiality must be protected. The impartiality of the Public Service is one of the partnership values under the Constitution.[69] In the UK, the Constitutional Reform and Governance Act 2010 makes some provision for the civil service. This includes that the Minister for the Civil Service has the power to "manage" the Civil Service,[70] that civil servants "serve" His Majesty's Government,[71] that they act with integrity, honesty, objectivity and impartiality,[72] and that appointment is based on merit in a fair and open competition.[73]

216. The relationship between Ministers and Portfolio Directors, who head the 5 Directorates, as public servants, with some being internationally recruited TCs is a key one. As set out in the Sarkin review, Ministers need to be empowered to make effective decisions. Ministers provide direction

[67] S. 46(8) perhaps.
[68] s. 46, Constitution.
[69] s. 2(f).
[70] S. 3.
[71] S. 7.
[72] S. 7
[73] S. 10

and objectives; PDs provide implementation and advice. But Ministers cannot manage PDs as if the Ministers were simply superior officials. They should not have the power to "hire and fire". Conversely, Ministers (who may be new and unfamiliar with their roles) need to be ready to take expert advice from PDs.

217. This vision for the Public Service broadly aligns with the views that were expressed to us. Public servants should be able to present advice and options to Ministers. That advice can sometimes be robust where there is a divergence of views on the merits of a particular policy. Public servants must be seen to respect the democratic mandate and authority of elected Ministers, whilst equally being free to point out flaws in ministerial plans. Public servants must not be politicised – they must respond to the preferences of individual Ministers. Ministers must have a role in the running of the Public Service, but not in a way which compromises its independence and impartiality. The Governor, as the ultimate source of authority for the Public Service, acts as an important safeguard. Although Ministers are to decide policy, it is not their role to act as line managers to individual public servants. These views were shared by all those who discussed the Public Service with us.

218. Despite the convergence of views on what the nature of the Public Service ought to be, there was a considerable degree of divergence on what the Public Service does. There was agreement on the theory, but disagreement on the practice. This was the most contentious and polarising issue that we dealt with in preparing both the Interim and Final Reports.

219. The St Helena public service has 981 Full Time Equivalents (FTEs), of which 112 are Technical Cooperation employees (TCs, see further below). With a population of a little more than 4,000, the dominance of the public service, as the major employer is clear, but also worrying, at a time when the St Helena Government is determined to broaden the local economy and tax/revenue base, and stimulate the private sector, with the UK Government (UKG) trying to reduce aid dependency.

220. We should say at the outset that we did not find a single public servant, Councillor or Minister who was not committed to making St Helena succeed. They all acted with integrity to work towards this goal. But in some cases, there were very different perceptions of who was actually running things. Some of the people we consulted felt there were times when public servants had more influence on policy decision than should ideally be the case under the Ministerial system and a professional public service. This divergence of perceptions on what the Public Service makes it harder to have an effective system of ministerial government. Elected Ministers must have primacy when it comes to making policy decisions, whilst at the same time respecting the expert advice of public servants.

221. As discussed in the section relating to ExCo, the Governor must obtain and act on the advice of ExCo. But under s. 43(2)(d), this does not apply to any matter to do with the Public Service. Under s. 43(3), the Governor is not obliged to act in accordance with the advice of ExCo for any matters listed in s. 44, including the Public Service.

222. We note the potential of generative AI, and this may offer part of the solution towards resourcing and expertise issue on St Helena. We suggest that the Public Service examines ways in which generative AI can meet some of the needs on the island to reduce reliance on public servants and TCs for some routine tasks. This would free public servants' time to address other issues. We note that the Clerk of Councils has already acknowledged the potential of AI in the production of Hansard.

Recommendation 35 – constitutional statement of function of the Public Service

223. The Public Service are covered very briefly in Part 7 of the Constitution**.** The Constitution also refers their impartiality as a partnership value. **We recommend that the Constitution be expanded to clarify the role of the Public Service. The Constitution should state that**:

- **the Public Service are to serve the executive authority by offering advice to, implementing decisions of, and carrying out other activities assigned to it by the executive authority.**
- **their independence and impartiality are to be respected.**
- **the head of the Public Service is the Chief Secretary.**

Recommendation 36 – consultative role for Ministers in senior appointments within the Public Service

224. At the moment, the Governor has sole responsibility for the management, appointment, dismissal and disciplining of all public servants. Under the Constitution, there is no automatic route for Ministers or the Chief Minister to be involved in this. In practice, the Governor does consult with the Chief Minister on senior appointments to the Public Service. The Financial Secretary is a special case under the Constitution. **The Financial Secretary is appointed by the Governor "acting after consultation with the Chief Minister".[74] We recommend that this procedure be extended to all appointments to senior levels in the Public Service (PDs and Chief Secretary)**.

225. This input is a matter of consultation only. Ministers should not have line management responsibility for public servants The Governor is the decision maker when it comes to management of the Public Service. We think this provides the necessary safeguard in such a small jurisdiction. Beyond saying there is an obligation for the Governor to consult, we do not wish to be prescriptive about the manner of this consultation.

Structure of the Public Service

226. The Chief Secretary is the Head of the Public Service. The office of Chief Secretary is not expressly mentioned in the Constitution (although the office of Financial Secretary is mentioned). [75] The CS provides sound and impartial advice to the Governor and the Chief Minister on the responsibilities of the St Helena Government. The Head of the Governor's Office advises the Governor on reserved matters such as external relations, defence and security including the police. The Chief Secretary is appointed by the Governor and runs the Public Service. A number of senior staff report to her, including the Financial Secretary, the Deputy Chief Secretary, the five Portfolio Directors, the Head of Strategic Policy and the Head of the Programme Management Office.

227. As with general population trends on St Helena, the Public Service is likely to be ageing on a similar basis, and plans need to be made to address this. The other problem, shared with other

[74] S. 109A(3) of the Constitution.
[75] S. 109A Constitution.

small jurisdictions, is that an able person at a lower rank cannot advance up the career ladder until the person above them leaves.

228. We note and commend the appointment of a Saint as the current Chief Secretary and encourage every effort for this to continue. With the impending retirement of the Chief Secretary in 2025 there will be an opportunity for the Cabinet (and LegCo) to express views on the job description, KPIs, appointment, discipline and any termination of the new officeholder. We understand that both the Governor and Chief Minister have agreed that the Chief Minister will be consulted on the appointment of the Chief Secretary.

229. S.44(1)(d) and s.95 of the Constitution provides that the Governor has the authority to appoint, remove, or discipline all public servants. Under s.95(2) the Governor may delegate this power to a public servant. We understand that this power has been delegated to the Chief Secretary.

230. The St Helena Public Service is principally distributed across five ministerial portfolios. It is for the Chief Minister to recommend to the Governor what portfolios there shall be, and how Ministers will be allocated to portfolios.[76] Within a department of Government (which we take to be synonymous with a portfolio for these purposes), the Minister shall exercise general direction and policy control.[77]

231. But subject to this, the portfolio is to be administered by a Director[78] (usually referred to as the PD). The PD is to act as chief policy adviser to the Minister.[79] The Chief Minister has residual responsibility for functions which have not been assigned to a portfolio.[80]

232. Alongside the five portfolios, there are functions that exist outside a portfolio (and therefore without a PD). These include Central Support, Treasury, Attorney General's Chambers, judicial services and internal audit. Policing sits separately and reports directly to the Governor. AG Chambers, judicial services and internal audit likewise sit separately and do not report directly to Central Support Service. Treasury reports to the Financial Secretary.

Recommendation 37 - Central Support Service as a portfolio, or integrated into portfolios

233. Central Support Service (CSS) is a key agency, with significant resources, and coordination roles on behalf of SHG. It is headed by the Deputy Chief Secretary with a reporting role to the Chief Minister (in the residual category of functions not assigned to a portfolio). As it is not a portfolio, it does not have a PD. Central Support Service provides support to all five portfolios as well as to ExCo and LegCo. The SHG website states "Our services include ICT, Administration, Internal and External Communications, Statistics, HR and Organisational Development, Transport, Information Management (including the activities of the SHG Archives service), Performance and Risk Management, Policy and Planning, and Performance Management." The SHG website states that

[76] s. 37B of the Constitution.
[77] s. 45A(1).
[78] s. 45A(2).
[79] s. 45A(3).
[80] S 37B(2).

"…Central Support Service is involved in all aspects of St Helena Government and underpins, leads and empowers operational delivery and strategic direction…".

234. The Central Support Service performs key organisational and coordination roles. **We recommend formalising Central Support as a Portfolio (possibly renamed Chief Minister's Portfolio) with the Deputy Chief Secretary as the Portfolio Director. This would make ministerial responsibility for it much clearer**.

235. **The current functions of the Central Support Service should be reviewed to determine whether all or some fit with a new Portfolio, with other functions being transferred to other Directorates**. This review should be conducted by the Chief Secretary.

Portfolio Advisory Boards

236. An important source of policy advice and means of coordination are the Portfolio Advisory Boards, each chaired by the Chief Minister, or relevant Minister:

- Education, Skills and Employment Advisory Board,
- Health and Social Care Advisory Board,
- Environment, Natural Resources and Planning Advisory Board,
- Economic Development Advisory Board,
- Safety, Security and Home Affairs Advisory Board,
- Treasury Advisory Board,
- Central Support Service Advisory Board.

237. The Chief Minister, Ministers, and Portfolio Directors (PDs) saw significant potential for the Boards to assist high level policy and decision making. **It would make sense, and emphasise the importance of Ministerial supervision, to call these Ministerial Advisory Boards rather than Portfolio Advisory Boards.** These should be distinct from internal Directorate, or cross-agency Boards, such as the Maritime Authority Advisory Board, which do not have direct Ministerial oversight or participation. Such an approach would also provide clear distinction from some processes under the Committee system, and better define Ministerial accountability and responsibility, in the first instance to LegCo, and equally importantly to electors and stakeholders.

238. It was put to us that Councillors should be able to attend the Ministerial Advisory Boards, but this would confuse the executive and Parliamentary functions. Furthermore, it is not in their mandate to do so, although as Councillors they have a full scope to question, and contribute to policy issues through LegCo and its Committees.

Public Service Commission

239. The Constitution allows for the establishment of an "independent authority". This was done in the past (the Public Service Commission). That Commission was not seen as successful and slowed down procedures without providing any additional benefits. That Commission was discontinued, and no interviewee was in favour of re-establishing it. **We are not aware of any**

support to create a Public Service Commission, and any benefits that might result are insufficient to warrant further consideration.

Service Level Agreements

240. One system that we think has merit and would be worth exploring further is some version of Service Level Agreements (SLAs). SLAs are widely used in a variety of contexts in many jurisdictions, and they can helpfully set out aims and expectations. In the case of the St Helena Government, a Minister could set out in the SLA his or her aspirations in terms of legislation, projects and so on. The PD could respond with an assessment of practicability, resources and affordability, noting any hazards (such as legal issues). An SLA is separate, and distinct from the contract of employment and could spell out the priorities, outcomes and outputs expected of the PD, with the Minister confirming the provision of the necessary human, financial and other support services to realise the objectives of the SLA.

241. An SLA is not an end in itself. They need to be well drafted and understood by both parties, especially in conjunction with contract or employment conditions on the consequences of objectives and priorities in the SLA not being met. Furthermore, constructive relationships need to be built and nurtured to realise the full potential of SLAs.

242. We note that SH Police is line managed by the Governor with a day-to-day reporting line to Safety, Security & Home Affairs (SS&HA) via an SLA for strategy, budget, HR support, emergency planning and response. In addition, SLAs are in place with SAMS covering print and radio journalism.

243. Once the SLA was agreed, it would become not only a programme of work but also a concordat between the Minister and the PD. The Minister could fairly hold the PD to delivery undertakings, and the PD would be protected from unagreed changes in a Minister's aspirations, SLAs would need to be updated after an agreed period (perhaps annually), not least to take account of any changes in circumstances. It would be for consideration whether there should be means of formal resolution if a Minister and a PD were to disagree about whether an SLA had been met.

Recommendation 38 – use of Service Level Agreements

244. **Service Level Agreements should be established between Ministers and PDs. This should be done near the start of the Ministers' term of office, and SLAs should be regularly reviewed**.

Technical Cooperation employees (TCs)

245. Where positions in the Public Service cannot be filled with local candidates, Technical Cooperation (TC) provisions may be invoked, an international job search takes place, and the appointment occurs at a remuneration much higher than a successful local candidate might receive. This creates some resentment at the local level, but in the near term there is no other solution as the talent pool is not always available on St Helena. Engaging TCs often means little continuity running a portfolio, plus the loss of momentum when a TC leaves a position. This is because many TCs are engaged on maximum three-year terms, and some on five-year terms, but many leave before the expiration of their term. Some posts are advertised locally first, and then as a TC post. Other posts

may go directly for TC recruitment, or advertised for both local, and international candidates (but with potentially very different remuneration packages).

246. With more than 10% of St Helena public servants being TCs, this also affects continuity and succession planning, as well as the overall salaries expenditures, with local salaries being considerably less than those paid to TCs (plus considerable on-costs). The positive aspect of TCs should be that they bring depth and experience from wherever they are based and have worked. The value of such contributions should be regularly assessed.

247. The UK's responsibilities to St. Helena, and to all the Overseas Territories that receive aid, are:

- to meet the territory's reasonable assistance needs for public services,
- to accelerate the territory towards economic self-sufficiency, where this is possible,
- to manage the risk of contingent liability.

248. In a 2012 White Paper, the UK committed to meeting the reasonable assistance needs of its OTs where financial self-sufficiency is not possible. UK support to St Helena through Official Development Assistance ensures that these reasonable assistance needs are fulfilled. Part of that support is through Short Term Technical Cooperation, and the filling of various SHG positions by international recruitment, where local recruitment is not possible.

249. The importance of TCs cannot be overestimated, nor their potential to bring international expertise and experience to SHG positions, and to empowering succession by St Helenians. Many TC positions are in highly specialised positions (such as medical), not usually required in a community of about 4,000 people, but clearly warranted in a remote self-governing Territory such as St Helena.

250. The St Helena Government published "Increasing opportunities and improving outcomes for all" Strategy April 2021 – March 2024, recognising that one of the challenges was "A shrinking work force - increasing the reliance on Technical Cooperation…". A recently advertised SHG TC position notes that "…officers employed through this 'Technical Co-operation (TC) Programme' are expected to share their knowledge and skills beyond the workplace to ensure their time on St Helena has the broadest benefit…" We understand that a key objective for all the roles funded through the TC Programme is Capacity Development. Capacity Development is defined by the Public Service as:

- developing specific job-related technical skills and knowledge in an individual or across teams or groups.
- enhancing knowledge, skills and abilities of individuals, teams and the Public Service as a whole.
- supporting the improvement of overall Public Service performance.
- enhancing knowledge, skills and abilities of individuals within the private sector and wider community.
- supporting the development of the island (including voluntary work) which may be unrelated to the substantive role.

251. Applicants are advised that they may be directly involved in succession planning and if so would be required to:

- participate in the performance management process and identify solution for filling skill/capacity gaps.
- facilitate continuing professional development for direct reports and the wider team as necessary.
- develop succession plans or contribute to succession planning for staff within the section.

252. These attributes and requirements are commendable and need to be reinforced.

253. Many TC positions, especially those in areas such as the health sector and allied services, are highly specialised, and only a technical assessment is required of candidates and their suitability. However, for other TC positions, including PDs, and executive positions where high level policy advice, or implementation of government decisions or strategies are required, the Chief Minister, or the relevant Minister, should be consulted. When a position is proposed to be filled by a TC appointment, we think that the Chief Minister or relevant Minister should be consulted on the need for a TC, the job description, reporting arrangements and the interview process.

254. There is a TC Monitoring Group, which presents an opportunity for the Chief Minister and Ministers to have input, both in a policy sense regarding the strategies in recruiting TCs, but also where proposed individual recruitments are proposed.

255. The recruitment processes of TCs need to be regularly reviewed and refined. In all instances, interviews are undertaken in person (UK based candidates) or by electronic means and this, combined with no opportunity to visit St Helena before taking up a position, to check housing, schooling, medical facilities, and shopping means there can be significant risks that living remotely may not suit a person, or their family, and high turnover of TCs may result.

256. TCs are required to complete a Capacity Development Record to assist SHG, and to inform the UK Government. These records, assuming they are timely, and comprehensive, should guide the implementation of ongoing reforms, and the visions and strategies of SHG.

Recommendation 39 – effectiveness of TC programme

257. **The Chief Secretary should provide an annual report to the Governor and Chief Minister, to be tabled in LegCo, on the effectiveness of the TC programme, and the extent to which it is contributing to local empowerment and succession, and the development and implementation of SHG visions and strategies**.

258. **The Chief Secretary, in conjunction with the Governor's office, and counterparts at FCDO, should regularly review the processes for advertising, interviewing, engaging, and deploying TCs to St Helena, including terms of office (duration and terms of appointment**).

259. **The Chief Minister and Ministers should be consulted on the need for each TC appointment, the job description and reporting frameworks**.

Accountability bodies

260. Accountability bodies are bodies which help hold those in power to account. More recently, some accountability bodies have been classified as fourth branch bodies or guarantor institutions. A fourth branch body is an addition to the classic separation of powers model of the state. After the legislature, judiciary and executive, some commentators refer to an additional branch as the fourth branch. These bodies are also known as guarantor institutions because they guarantee important constitutional norms and principles which may otherwise not be enforced. These are constitutional institutions that have an enhanced status and have been deliberately created. We identify here three fourth branch bodies: a Commissioner for Complaints, the Equality and Human Rights Commission, and the Media Commission.

Commissioner for Complaints

261. The Constitution states that the Governor may appoint a Complaints Commissioner,[81] (in some jurisdictions referred to as an Ombudsman, Ombudsperson, or Parliamentary Commissioner for Administrative Investigations). The purpose of the Commissioner would be to investigate maladministration in the government. The functions of the Commissioner are to be set out in an Ordinance. This power has not been exercised, and no Ordinance has been enacted. The Constitution states that a Commissioner is to act independently and is not subject to the direction or control of any person. In other jurisdictions, Ombudsmen are seen as a cheap and effective way to remedy maladministration. A Commissioner would not interfere with the valuable work of the Public Accounts Committee; the former investigates maladministration, the latter the expenditure of public money.

262. Appointing a Commissioner would recognise:

- the power of public authorities to affect people's daily lives,
- the need for these authorities to be accountable for this power,
- the desirability of creating a body that provides timely, accessible and low cost means for people to resolve their disputes with these authorities, and
- reduced reliance on seeking redress via other means, such as via the courts, Governor or Councillors.

263. Wales and Northern Ireland have helpful modern precedents for a Commissioner.[82] The key aspects are:

- statutory statement of independence,
- ability to carry out investigations following a complaint from the public (the UK precedent of requiring a complaint first to be referred to an MP is an unnecessary hindrance),

[81] s. 113 of the Constitution.
[82] Public Services Ombudsman (Wales) Act 2019, Public Services Ombudsman Act (Northern Ireland) 2016. For the earlier English equivalent, see Parliamentary Commissioner Act 1967.

- ability to carry out an investigation on their own initiative,
- remit to cover all administrative actions (potentially extending to work of health authorities, police, child deaths, domestic violence issues),
- investigatory powers (including powers to compel government to provide information),
- powers to order a remedy (making a finding of fact, requiring the government to do, or refrain from doing a particular thing, sometimes ordering compensation to be paid),
- inquisitorial system (no lawyers, no hearings, Ombudsman carries out all necessary investigations),
- annual report to legislature on exercise of powers, and
- guidance on complaints handling procedures for government.

Recommendation 40 – appointment of Complaints Commissioner

264. **We recommend that the Governor should appoint a Complaints Commissioner and that LegCo should enact an Ordinance setting out the functions of that office.** We acknowledge there is a financial implication in this proposal, but it is unlikely to require a full-time incumbent.

Equality and Human Rights Commission

265. The Equality and Human Rights Commission is established under the Commission for Equality and Human Rights Ordinance, 2015 and has a wide range of responsibilities relating to rights established under the Constitution. The Governor has a role in appointing persons to the Commission and the Commission sends reports to LegCo. Under the Framework Agreement[83], the Chair of the Social and Development Committee will present the Commission's business to LegCo. That Framework Agreement preceded the move to the Ministerial system, and that Committee no longer exists. It would be worthwhile updating the Framework Agreement by specifying the route by which EHRC papers are presented to LegCo. The Commission has a comprehensive strategic plan (currently being updated), and priorities to be addressed.

266. The Commission is sufficiently arm's length from government influence and direction (as evidenced by the requirement that it secures its own public liability insurance), even though its funding, and the appointment of the Commission, are by the Governor. The CEO is appointed by the Commission, with the consent of the Governor. In our view, it complies with the Paris Principles on national human rights institutions.[84]

267. The EHRC has clear objectives and work plans and is initiative-taking in identifying opportunities and challenges consistent with its objectives and remit. It has exercised its powers to intervene in judicial review cases and has sent letters before action to the AG in respect of potential legislation.

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[83] Available at https://sthelenaehrc.org/wp-content/uploads/2021/06/final-signed-ehr-commission-framework-agreement-27-april-2020.pdf

[84] The Paris Principles (*Principles Relating to the Status of National Human Rights Institutions*) set out the minimum standards that NHRIs must meet in order to be considered credible and to operate effectively. They can be found at https://ganhri.org/paris-principles/

268. There are opportunities for the Commission to be more proactive, under its existing mandate. Under s. 12 of the EHRC Ordinance, the EHRC has the power to monitor laws, including the power to give an opinion to ExCo on the likely effect of a proposed change of law. To facilitate this, the Commission needs to have a formalised role in assessing and commenting on proposed legislation.

269. We found that the EHRC performs a valuable and necessary role in helping the Ministerial system comply with human rights and the rule of law.

Recommendation 41 – formalised route for EHRC to be consulted on legislation

270. **Protocols should be agreed between the Commission, the Chief Minister and Ministers, the Chief Secretary, and PDs to ensure that the EHRC has a formal consultative role when legislation is under consideration.** The assessment could be tabled at LegCo, in conjunction with the introduction of relevant legislation. In the first instance, this could be arranged by protocols, but if this fails, then consideration could be given to a legislative right for the EHRC to be consulted. The assessment of EHRC should not be determinative of whether a Bill is passed (only LegCo should have this power), but it should be persuasive. For example, having considered the opinion of the EHRC, there may be a need to amend the Bill.

St Helena Media Commission

271. The Media Standards Ordinance 2011[85] established "a media commission to regulate media services and enforce media standards". The Commission is chaired by the Chief Magistrate and consists of two to four members, none of whom may be members of LegCo or of the public service. The duty of the Commission is to issue Codes of Practice, to monitor compliance, and to investigate and adjudicate upon any alleged or suspected breach of the Codes. The Commission is guided by regulatory objectives including protection of vulnerable persons, protection of the public from defamatory, discriminatory, offensive or harmful material. It is to ensure accuracy and impartiality in factual material, to distinguish between fact and opinion, and to guard against the use of subliminal techniques. Other provisions govern complaints, investigation and sanctions.

272. In August 2023 the Commission issued the 2023 Media Standards Code of Practice, replacing that issued in 2014. Individual Codes within the 2023 document cover accuracy and impartiality; privacy; harassment; children; children and the "watershed"; vulnerable adults; the reporting of crime; discrimination; special arrangements during elections and referendums; complaints; and the public interest.

273. The Code of Practice is extremely well drafted: clear, elegant, fluent and comprehensive. It is also couched in accessible rather than legalistic language. St Helena is fortunate to have these arrangements, which might be envied by some other jurisdictions.

274. **The Commission and the Code are evidently working well, and we have no further comment to make**.

[85] Ordinance 18 of 2011. See also Ordinance 3 of 2012.

Decision making

Impediments and solutions to improved decision making

275. One of the biggest drivers in the Sarkin report for the system of Ministerial government was to speed up decision making. Under the Committee system, Sarkin found that decisions were delayed unnecessarily, quoting the then Governor's comment that decisions were taking years, not weeks.

276. When we asked the question – "has decision making improved under Ministerial government?" we got a wide range of answers. Most thought that things had improved to a certain degree. But some were still highly critical of an inability to make long-term strategic decisions. The lack of a legislative programme and the paucity of legislation indicate that decision-making remains a challenge.

277. We tentatively suggest at least three reasons for this. First, there is a tendency to escalate decisions up the chain of command, rather than take them to a lower level. Not everything needs to end up on the Governor's desk or be discussed at Cabinet. Ministers should feel empowered to take decisions themselves, and for operational matters, public servants should likewise feel empowered to take decisions which are within the policy parameters decided by their Minister. Second, it was suggested by some that there is still a reliance on committees to spread responsibility (and blame) for decisions. Rather than one decision-maker taking the decision, the decision gets referred to a committee, so that the end result is not the fault of any one individual. As well as spreading responsibility, it also slows down decisions, as points are rehashed, and pushed back to a more distant committee meeting. Third, there is not enough strategic or long-term thinking. Ministers can become too focused on minor operational points, or firefighting immediate problems.

278. All this can sometimes result in there being too much focus on processes and procedures rather than on outcomes. For example, an idea may be raised within a portfolio and escalated to a paper for the Ministerial Advisory Board. If agreed there it goes to Cabinet, if agreed in principle by Cabinet, it goes back to the portfolio, who then work up the detailed paper, back to the Ministerial Advisory Board, then back to Cabinet for approval, then back down to the portfolio for implementation. In a smaller jurisdiction, one benefit should be faster and more agile decision making. Not everything has to go to a formal working group with established terms of reference.

279. However, we recognise the difficulties in making decisions in a very small jurisdiction. Decision-makers (and especially Ministers) do not have the degree of insulation from the public that is available in larger jurisdictions. Ministers will see the people that have been affected by their decisions daily. This makes all political decisions personal.

280. We note the existence of "task and finish" groups. These are entrusted with a specific task to do, and once done, the group ceases to exist. Provided that these do not create a separate level of bureaucracy, or slow down decision-making, we see no difficulty with these groups.

281. We examined the Strategic Outcome Framework. SOF is "a holistic, strategically led, long-term framework to inform short-, medium- and long-term planning, development, investment, prioritization, and decision-making".[86] SOF is currently being developed and embedded within the government system in St Helena.

282. If the objectives of the Framework can be realised it should greatly assist:

- development of the high-level long term strategic roadmap for the development of the Island,
- development of a multi-year cross-portfolio plan, prioritised based on value, resources, risks, achievability (ideally with multi-year funding). This would include prioritisation and phasing of key development areas thus transforming key areas of service (such as education or health) in a planned way,
- completion of the Measurement Framework and alignment to the Logframe,[87]
- review of governance to support development and delivery of a cross-portfolio plan,
- regular reviews and assurance, throughout the year, of delivery and variance in terms of time, budget and outcome delivery of the current plan and future forecast,
- shifting the focus from how to cut costs to delivering more value.

Recommendation 42 – greater individual responsibility

283. **Ministers and other decision-makers need to be more willing to take personal responsibility for decisions. In line with our recommendations on delegation, not all decisions need to be escalated. Ministers need to be more assertive in their ownership of portfolio matters, whether legislative, financial or public policy, and with that goes direct accountability for outcomes**.

Recommendation 43 – use of Strategic Outcome Framework

284. At this stage, we can make no finding on the effectiveness of SOF. However, **SOF provides for a systematic way to plan and to make decisions, and this is very much to be welcomed. It has already been accepted within the Government and there is little point in creating a new alternative system. As such, we endorse its use**.

Delegation of decisions

285. Delegating decisions is a valuable mechanism to ensure that decisions are made at an appropriate and responsible level, and which may:

- be more efficient,
- save time in the decision-making process,
- empower public servants, especially with skills development, and authority to make appropriate decisions.

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[86] Tanya Durlen and Judge Matharu, Strategic Outcome Framework (St Helena Government, December 2024).
[87] Logframe is a logical framework matrix; this is the language used in the SOF itself.

286. Delegation should be to an officeholder rather than to a named person. Different terms can be used in different jurisdictions to describe this process (delegated authority or sub delegations). Sometimes delegation is seen at the same thing as an authorisation. However, there can be a difference:

- a delegation is usually unlimited authority (although it may be limited) provided by an office holder, who has a statutory duty or responsibility, and is permitted, by legislation, to delegate to another position holder. It usually includes a wide discretion for the office holder in making the decision, including attaching limits or conditions to the determination.
- an authorisation is usually more limited, provided by an office holder, to another position holder to perform a particular act, in particular circumstances, such as issuing a permit, or a fine.

287. At the same time, it is important that office holders exercising delegated authority, or as an authorised person, understand that in doing so they, are acting as an "agent" of the original office holder who had the authority, and who continues to retain the original authority – it is thus shared.

288. Accordingly, any obligations that attach to the original office holder, such as declaring conflicts of interest, or gifts and so on, also attach to the office holder delegated authority.

289. We have confirmed with the Attorney General that the UK legal principle known as the *Carltona* principle applies in St Helena.[88] *Carltona* means that, where a function is given to a minister (or other official) they are not expected to exercise that function personally in every case. Normally that function will be exercised in their name by a civil servant. Whether or not this is seen as a delegation, it has the same net effect – decisions to be taken by the Governor / Minister need not always be taken personally by them.

290. As we previously noted, the Governor has express powers in the Constitution to delegate some matters. The most significant of these is that the Governor may delegate to the Chief Minister, or other Ministers, any matters that relate to:

- internal security,
- justice,
- finance,
- but not any matters relating to the appointment of any officials in the St Helena Public Service.[89]

291. But there are also other express powers for the Governor to delegate, for example the power of the Governor to make grants of land may be delegated.[90] Under the terms of the Interpretation Ordinance, where the Governor has legislative authority to delegate a function, it can be delegated to a named person, or to a person holding a particular office.[91]

292. There are many examples where the Governor is given a particular function, but without an express statement that that function can be delegated:

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[88] The name comes from the legal case establishing the principle, *Carltona v Commissioner of Works* [1943] 2 All ER 560.
[89] S. 44 of the Constitution.
[90] S. 31 of the Constitution.
[91] S. 21 of the Interpretation Ordinance.

- power to appoint building inspectors.[92]
- power to appoint an issuing officer who is not the Director of Police.[93]
- power to appoint school attendance officers.[94]
- power to appoint members of the National Honours and Awards Committee.[95]

293. It is inefficient to require the Governor to do all these things personally, especially when the impetus or suggestion to do them is likely to come from the police, a Minister, a PD, the Chief Secretary or some other person.

294. It is likely that these functions are survivals from the committee system, where the Governor had a more direct role in running things. They do not now fit with the Ministerial system, where it is for Ministers to decide on how to run their portfolios. For example, why does the Minister for Education have to go to the Governor to ask the Governor to appoint a school attendance officer?

295. Formal opportunities for delegation exist for others in government. For example, the Land Planning Development Control Ordinance states that "The Chief Planning Officer may delegate any of his or her powers and duties under this Ordinance to any other Planning Officer".[96] So there is an opportunity for a public servant to delegate to another public servant. This provision is appropriate and sound. Other Ordinances contain similar provisions.

296. Some, or all, of such administrative processes may have been delegated, but there are no public records (such as on the SHG website) of what delegations are in place and, if there are, of what decisions were taken under their authority. This is particularly important where delegated authority is the basis for a public servant being able to incur expenditure.

Recommendation 44 – consideration of what can be delegated

297. **The Governor, Chief Minister, Ministers, Chief Secretary, and PDs should consider and recommend how delegated authority might be applied more broadly, having regard for competency and other factors.** This review should be both "top down" and "bottom up" with consideration given to matters which could be delegated by the current authority holder and sought by potential authority holders. Where there are legislative restrictions, it will be necessary to legislate to remove them.

298. This review could be formalised, with coordination by the Chief Secretary, or a nominated project manager. Where necessary and appropriate, it could involve the Head of the Governor's Office, in relation to matters affecting the Governor. Delegations should be reviewed annually.

299. Within reason, the Governor should address high-level matters, not routine matters. Administrative matters should be capable of being determined by Ministers, or public servants. Ministers should likewise be dealing with higher-level matters, and not routine or administrative

[92] S. 3(1) Building Control Ordinance.
[93] Dogs and Cats Ordinance 2011.
[94] S. 32 Education Ordinance, 2008.
[95] S. 3 of the National Honours and Awards Ordinance.
[96] S. 8(4) Land Planning Development Control Ordinance.

matters capable of being dealt with by PDs. PDs, and public servants should be encouraged to identify matters which they could delegate to a more appropriate level for determination.

300. Delegating authority to office holders will free up the "primary" holder to make more appropriate high level, strategic decisions, without being overwhelmed with mundane administrative matters, which could be better implemented by others.

Recommendation 45 – record keeping of delegations

301. Significant decisions, determined by the PD, made under delegated authority should be published monthly (or some other interval as determined by the original authority holder), at the Directorate website.

Recommendation 46 – legislative transfer of executive functions from Governor to Ministers

302. We have set out above four places where legislation (which pre-dated the Ministerial system) contained functions for the Governor to exercise, but where it would be more appropriate for the relevant Minister to exercise them. These are all just examples, but in each of these places, the legislation could be amended so that these functions are delegated. A general legislative provision that all references to the Governor are deemed as references to the relevant Minister would be too legally uncertain and we do not recommend it**. It is necessary to make separate amendments to individual statutes delegating specific powers from Governor to Minister or Ministers.**

Public consultation and engagement

Expectations, limitations, and options

303. Public consultation is an essential element in democratic governance, but too often, in a range of jurisdictions, it is formulaic and ineffective. Not only must consultation be designed to engage citizens properly, but there must also be a readiness to take it into account in decision-making.

304. In our review, some stakeholders told us that the Ministerial system had led to diminished public consultation, and with it, accountability. They expressed to us high expectations of a form of government which would be inclusive, and many looked back with fondness to the processes used under the Committee system.

305. Modern public policy making is such that not every decision made by executive government should be open to public consultation. But it also follows that, where time permits, and the issue is of sufficient public interest, that there should be imaginative and effective public engagement. In the UK, the current norm for public consultation is twelve weeks.[97] We note the announcement on 25

[97] See Cabinet Office guidance on consultation principles at https://www.gov.uk/government/publications/consultation-principles-guidance

March 2025 for the public consultation on the Communications Bill, with a consultation period ending on 16 April 2025. Three weeks is a very short time for the public to be made aware of the proposals, to read a technical 81-page Bill, to consider it and to come up with a measured response.

306. Currently there is no provision for petitions from citizens to be lodged directly with LegCo. Standing Orders do provide for a Member to lodge a petition, presumably on behalf of citizens -- but what if a petitioner cannot get a Member to sponsor it? Standing Orders also provide that a Member may request that a petition be referred to a Select Committee.

307. The Government has an official website, and for social media, it uses:

- X –used for a variety of public service announcements including promotion of tourism and related matters, but also for inviting public submissions on legislation. The Governor's use of X is regular.
- Facebook – seems to be the preferred vehicle with a range of community service announcements.
- You Tube – the "governance" section has no new clips for more than 12 months. Question Time at LegCo is current only to October 2024.

308. Whilst it is important to use the internet and social media, it is also important that the government's community engagement strategy recognises:

- the digital divide with:
  - areas of SH having patchy internet reception, or none,
  - citizens, especially the elderly, or disabled who may not be computer literate, or cannot afford devices that are internet compatible,
  - citizens for whom English is a second language.
- the need for a broad range of mechanisms to communicate with citizens, including the use of digital and traditional mechanisms.
- the need for regular review of the efficiency and effectiveness of social media – the platforms, their use, and whether they are one way – only providing information – or two way – accepting comments.
- reasonable timeframes for citizens to assess proposals and form their views, before the deadline for submitting comments.

309. For similar reasons, care should be taken to ensure that calls for submissions on government proposals are not advertised solely on internet-based applications.

310. Not every decision by the Chief Minister, Ministers, Cabinet, LegCo, or ExCo, or public servants must be subject to public consultation, in advance of the decision. Some matters may be relatively trivial or administrative in nature. Others may be politically or commercially sensitive, or time critical. At the same time, major policies ought to be consulted on. Other than in exceptional circumstances, or where only minor changes are intended, legislative proposals should always be consulted on.

Recommendation 47 – petitions

311. Standing Orders of LegCo should be revised to permit petitions to be lodged by citizens and referred to the relevant LegCo Committee. They should not need an Elected Member as sponsor.

Accountability

By whom, to whom, for what, and how?

312. There seemed to be little general awareness of who to hold accountable for decisions – the Governor, ExCo, LegCo, Chief Minister, and Ministers, or public servants. There often appeared to be a notion that, somehow, every Minister, and every Councillor must be personally and directly accountable to every voter, for every decision, and that the absence of a mechanism to ensure this was somehow a weakness of the Ministerial system. Each Minister does have ultimate responsibility for what happens in his or her Portfolio. But this is often tempered by the nature of the issue, and whether the Minister could have known and acted in the first place.

313. The issues are:

- who is responsible?
- for what, and
- to whom, and how?

314. The Chief Minister and Ministers are responsible to LegCo, both individually for their own actions, and collectively for ExCo's actions. Individual Ministers hold office at the discretion of the Chief Minister and are thus accountable to the Chief Minister.

315. Small communities, and strong family and friendship circles on the Island mean that information (and often misinformation) is readily disseminated. Some of the confusion regarding accountability arises from confusion regarding roles and responsibilities, and occasional "overlaps" between LegCo/Cabinet/ExCo. The determination by the Chief Minister, Ministers, and Councillors to engage with citizens, using a variety of means, is commendable.

316. The partly Government-funded SAMS, through its radio station and newspaper, provides effective and efficient engagement, especially through the regular appearances by the Chief Minister, and Ministers, and Councillors. We were also grateful to SAMS for hosting us twice on the radio.

317. As set out above, the Freedom of Information Act 2000 was expressly disapplied from applying in St Helena. Therefore, there is no Freedom of Information legislation, which, as exists in most jurisdictions, provides a basis for citizens to see information on which government decisions are based, within limits and timeframes to do so. However, there is a Public Access to SHG Information Code of Practice 2014 – updated in 2020, although it is unclear how many requests are made annually, nor the effectiveness of the processes, such as external review. The Code applies only to public requests for SHG information where it is not already available by other means.

318. The Code notes that "any member of the public can already request information held by SHG, and such requests are normally directed to the relevant Directorate." Information requests are directed to and handled or determined by the Executive Manager Corporate Services. The goal is to respond to requests within 20 days, but this may be extended by another 20 days. A right of internal review may be exercised.

319. In 2017 a review[98] by SHG of the first 32 months of operation of the Code indicated that 29 requests in total had been made, of which two were still being assessed, and 10 had been refused (for permitted reasons). An average of one request per month might indicate little interest in seeking information (some of which may be in the public domain already), or that citizens and stakeholders are not aware of it, or do not have confidence in it.

320. The Code may benefit from a review to determine that the guidelines and processes are still fit for purpose, especially with views from those who have engaged the process (with whatever outcome). The review should also consider the range of "exempt matters" to determine if any of these may be relaxed.

321. There is no whistleblower (sometimes referred to a public interest disclosure) legislation. We note that this is part of the Strategic Plan adopted by the Equality and Human Rights Commission.

322. Given the complexity of some of the constitutional, parliamentary and administrative arrangements on St Helena, it is hardly surprising that there is a lack of public understanding of the roles of those involved, and how it all fits together. **There is an important job of education to be done, involving the Governor, Ministers, Public Service, teachers and many others. If st Helenians understand better what they have, they will be more inclined to value and to own it.**

Miscellaneous changes to the Constitution

323. The rule of law is one of the partnership values. It is rightly recognised as forming the bedrock of an effective system of government. There are a small number of areas in the Constitution which do not fully reflect the importance of human rights and the rule of law. We did not find any evidence of these being abused, but having effective protection for human rights and the rule of law is an important constitutional safeguard.

[98] Available at https://www.sainthelena.gov.sh/2017/public-announcements/public-access-to-shg-information-code-of-practice-working-well/

Human rights, rule of law, ouster clauses

324. An ouster clause is a provision in legislation which "ousts" the jurisdiction of the courts in specified circumstances. It means that those circumstances are non-justiciable – no court can inquire into them, or make a ruling based upon them. Ouster clauses work by stating that a particular decision (in this instance of the Governor) is "final" or that it cannot be questioned by a court. As a general proposition, ouster clauses are contrary to the legal principle that everyone should have a right of access to a court – that we can all have our rights vindicated by going before an independent judge with the authority to make a binding judgement.

325. Section 4(2) of the Constitution states:

> "As the partnership values are statements of political principle, no court shall find that any act or omission of an organ of government was unlawful on account of a failure to give effect to the partnership values."

326. The first two partnership values are good faith and the rule of law. These are described as "statements of political principle". They may well be statements of political principle, but it is hard to think of anything that is more of a legal principle than the rule of law, which is a core legal value.[99] In the UK, the Supreme Court has ruled that implicit in the grant of legislative power to a devolved legislature is that legislative power must be exercised in a way that is compliant with the rule of law.[100] The idea that a court could not rule something as unlawful because it breaches the rule of law is a fundamentally flawed proposition. S. 4(2) therefore acts as an ouster clause – as it seeks to oust the jurisdiction of the courts.[101]

327. The Constitution sets out fundamental rights and freedoms, which broadly align with internationally accepted human rights. The Supreme Court may make declarations and give directions for securing enforcement of these rights.[102] One of the only two Acts of Parliament which have been expressly disapplied in St Helena is the Human Rights Act 1998.[103] The disapplication Order states that the Human Rights Act is "hereby declared to be unsuitable to local circumstances". Presentationally, this looks bad.

328. As discussed above, the Governor must obtain and act on the advice of ExCo. But under s. 43(2)(d), this does not apply to any matter to do with the Public Service. Under s. 43(3), the Governor is not obliged to act in accordance with the advice of ExCo for any matters listed in s. 44, including the Public Service. Either s. 43(2)(d) is redundant as it is repetitive, or else the policy intention is that the Governor cannot ask ExCo for its advice on the Public Service.

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[99] In UK legislation, see ss. 1 and 17 of the Constitutional Reform Act 2005. See for example special issue 2017 Vol. 5 Theory and Practice of Legislation "Legislation against the rule of law".
[100] AXA Insurance [2011] UKSC 46.
[101] There are further ouster clauses in s. 26(4), 43(10) and 118(4).
[102] S. 24 of the Constitution.
[103] See English Law (Application) Ordinance, 2005 Human Rights Act (Disapplication) Order, 2010.

Recommendation 48 – make the rule of law justiciable, remove ouster clauses

329. **Under s. 4(2) of the Constitution, the rule of law is non-justiciable, meaning that it cannot be adjudicated upon by a court. This ought to be corrected, and the ouster clauses in s. 26(4), 43(10) and 118(4) should be removed**.

Recommendation 49 – enhanced human rights procedures

330. **In the UK, the Human Rights Act 1998 contains a provision that all legislation must be interpreted, so far as is possible, to be compatible with human rights.[104] We recommend similar provision for St Helena**.

331. Secondary legislation which is not compatible can be struck out by the courts in the UK. Primary legislation of the Westminster Parliament may not be struck out, but courts can make a declaration of incompatibility. Primary legislation of Scotland, Wales and Northern Ireland can be struck out for breach of human rights.[105]

332. **As the 2009 Constitution Order is of higher authority than Ordinances, we recommend it be amended to give the courts the express power to strike out Ordinances that breach human rights**.

Next Steps

333. When we deliver our final Report to the Westminster Foundation for Democracy, our work will be over. We hope that it will, to some degree, have contributed to the good governance and prosperity of St Helena, an Island and community for which the three of us have developed considerable affection.

334. It may be helpful if we end this Report with some thoughts on how our recommendations may be assessed and, where agreed, taken forward.

335. We would like to see public debate and comment on our Report before the General Election, but we take it that the initial *formal* response will come from the new (post-Election) LegCo. It will be difficult to handle in plenary this lengthy Report, with a large number of disparate recommendations. We would therefore expect there to be a debate to accept the Report, on which amendments could be moved in respect of particular recommendations. This is a debate which might usefully extend over more than one sitting.

336. We hope that means will be found to assist LegCo and to involve a broad cross-section of St Helena life and opinion. One method would be the establishment of a

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[104] S. 3 Human Rights Act 1998.
[105] Scotland Act 1998, Government of Wales Act 2006, Northern Ireland Act 1998.

Commission under the authority of the Governor, but as a joint initiative with LegCo. We would envisage such a Commission having a broadly representative membership, consulting widely among St Helenians.

337. Whatever may be decided there will of course be two key players: LegCo providing the democratically elected element, and the Governor as the representative of His Majesty's Government. The Governor's agreement will be necessary for any of the constitutional changes we recommend, but we confidently hope that he will express a view on those, and on the Report more generally, and that our recommendations will have the support of His Majesty's Government.

Annex 1 – St Helena Governance Review Team

Dr Ronan Cormacain
Ronan is a consultant legislative counsel and has drafted or advised on legislation in many jurisdictions around the world, including Northern Ireland, Wales, England, Guernsey, Gibraltar, Azerbaijan, Armenia and Pakistan. As an academic, he specialises in constitutional law. His book *The Form of Legislation and the Rule of Law* builds upon his PhD research linking legislative drafting and the rule of law. Ronan is an editor at the journal *Theory and Practice of Legislation* and has published widely in the fields of legisprudence and constitutional law. He was a member of the working group of experts at the Office for Democratic Institutions and Human Rights at the Organization for Security and Co-operation in Europe which produced *Guidelines on Democratic Lawmaking for Better Laws* in 2024.

Mr Steven Tweedie
Steven has extensive experience in local government and legislative capacity building in Australia, South Africa, Bosnia and Herzegovina, Kosovo, Turkey, Jordan, Indonesia and Bhutan. Importantly in the context of this Project he has experience working in Kiribati and Vanuatu, as small island states. He is a passionate advocate for elected member capacity building and the acknowledgement of proper roles and responsibilities, of, as he calls it, both "the anointed" (the elected), and "the appointed" (the public servants).

Lord Lisvane KCB DL (Robert)
As Sir Robert Rogers, he was Clerk and Chief Executive of the UK House of Commons 2011-14, having in his career of 40 years served in every office of the House Service.
On retirement he received a peerage, and sits on the Cross Benches, specialising in parliamentary and constitutional and governance matters. In 2023 he chaired the House's Inquiry Committee on AI and Weapon Systems. He was joint author of three editions of *How Parliament Works*, and author of two *Parliamentary Miscellanies*. He believes that citizens' understanding of Parliamentary institutions is key to having ownership of them.
He has undertaken a number of governance inquiries, including into the corporate governance of the City of London, but he also understands the characteristics of smaller jurisdictions, having conducted a public inquiry into the working of Tynwald and its place in the Isle of Man's constitution.

Annex 2 – Summary of Recommendations

Recommendation 1 – greater clarity of roles for ExCo
We recommend that s. 35 of the Constitution should state in its title that the function of the Executive Council is to offer advice to the Governor on the exercise of the Governor's executive functions. The heading of s.43 should change from “Governor to consult Executive Council” to “Governor to act on advice of Executive Council”. This is an important symbolic change to highlight the proper division of functions between Governor and Executive Council.

Recommendation 2 – clarification of special responsibility for finance
There is a need for clarification on the policy intention of giving the Governor special responsibility for finance, and how this relates to the role of a Minister for Finance and the Financial Secretary. This could be achieved through a concordat, or a memorandum of understanding, listing discrete elements of “finance” and stating which person has responsibility for them (Governor, Minister for Finance, or Financial Secretary). There needs to be agreement on who is best suited to exercise each element of financial responsibility. It is not possible for us for be definitive in detail on the precise division in this Report. If there were to be the appetite and capability on-Island, then the Governor’s role could be one of oversight, rather than executive responsibility for finance.

Recommendation 3 – ExCo decisions and reasons for decisions made public
We recommend that as a general rule the decisions taken at ExCo, and the reasons for those decisions, should be made public, unless there are strong grounds for not doing so.

Recommendation 4 – functions of LegCo and Councillors
We recommend that the Constitution be amended to specify that the functions of Councillors are:

- to represent citizens,
- to scrutinise legislation introduced by Ministers, and to initiate legislation,
- to provide oversight of Ministers and public servants,
- to scrutinise and authorise the Budget,
- to debate issues of public importance.

We recommend that LegCo should sit more frequently.
We recommend that the title Councillor be given to Elected Members who are not Ministers.

Recommendation 5 – capacity building for Councillors
We recommend that Councillors have capacity building, specifically in the roles and functions of being a Councillor.

Recommendation 6 – legal advice available to LegCo
We recommend a tiered system for the AG giving legal advice. In most cases, it is appropriate for the AG to give advice to the Governor, ExCo and LegCo.

Recommendation 7 – enhanced role for Clerk of Councils
For the ordinary transaction of business, the advice of the Clerk of Councils, and if necessary, a ruling by or under the authority of the Speaker, will suffice.

Recommendation 8 – publication of proceedings
Sufficient resources, especially staff, should be devoted to the publication of the notice paper, and the timely transcription and publication of the proceedings (Hansard) of LegCo at the website.

Recommendation 9 – dedicated email addresses for all Elected Members
We recommend that all Elected Members should be allocated a dedicated, and consistent email address, based on gov.sh protocols or referring to LegCo in some way.

Recommendation 10 – financial separation of LegCo
The net effect of the change set out in recommendations 1 to 7 of the Laurence Smyth Report would be to provide a modest pathway towards a degree of separation between legislature and executive. We think this is a sensible and thoroughly desirable goal.

Recommendation 11 – employment separation of LegCo
We recommend that the Speaker should have line management responsibility for the staff of LegCo. The precedent for this already exists within St Helena. Staff of the court service and of AG Chambers, although nominally part of the Public Service, report, in the main, to the judiciary and the AG respectively.

Recommendation 12 – role of Speaker and Deputy Speaker
We recommend that the Office of the Speaker, in conjunction with the Governor, Chief Minister, and LegCo develop a detailed job description for the positions of Speaker, and Deputy Speaker, which is made available with the advertisement inviting expressions of interest for the positions, together with a description of the recruitment process.

Recommendation 13 – Ministers not to be members of PAC
We recommend that Ministers should be ineligible to be members of the PAC.

Recommendation 14 – PAC chair appointed by LegCo
As an important LegCo committee, the Chair of the PAC should be appointed by LegCo rather than by the Governor.

Recommendation 15 – greater control by LegCo of Select Committees
There should be greater ownership and control of Select Committee activities by LegCo rather than by the Governor. As part of that change the purport of the Select Committees (Establishment) Order 2022 should be converted into a Standing Order of LegCo, much shortened and simplified in the process. The Committees should specifically be empowered to examine not only what has happened, and why, but also to be prospective in their inquiries.

Recommendation 16 – PAC and Select Committees: protection of parliamentary privilege
We are in no doubt that they should be, and we recommend that PAC and Select Committees should be protected by parliamentary privilege. At the same time the Proceedings Ordinance should be amended to make it clear that the protection of privilege extends to the working papers of the Committees (and of any LegCo committee subsequently created) as well as to papers held or created by a Councillor for the purpose of proceedings in the committees or in LegCo.

Recommendation 17 – disability access to Council Chamber
We recommend that step-free access to the Council Chamber should be a priority.

Recommendation 18 – an end to Informal LegCo
We recommend that all meetings of LegCo should be formal meetings, with full public access.

Recommendation 19 – changes to the certificate of urgency procedure
We recommend that a certificate of urgency should be signed by the Chief Minister rather than by the Governor. The certificate would need to state that the Chief Minister is of the opinion that, for reasons of urgency (which must be stated explicitly), it has not been possible to deliver the Bill in advance.
We further recommend that the Speaker must be satisfied of the need for urgency before the certificate becomes effective.

Recommendation 20 – minimum time periods between stages of a Bill
There ought to be at least one week between Stage 1 and Stage 2, and at least one week between Stage 2 and Stage 3.

Recommendation 21 – commencement date on the Bill
The commencement date should appear on the face of the Bill.

Recommendation 22 – Private Members' Bills
We recommend a more systematic and formal approach to PMBs which would have the effect of facilitating greater engagement by Councillors. This would include a system for rationing PMBs and the agreement of the Attorney General to assist in their drafting, or a formal process for tendering out for drafting.

Recommendation 23 – assent solely a matter for Governor
We recommend that assent to a Bill ought to be solely a matter for the Governor.

Recommendation 24 – LegCo to consider delegated legislation
LegCo should have a role in the making or consideration of delegated legislation. The least burdensome procedure is the negative procedure, so that delegated legislation is laid before LegCo and they have an opportunity to reject or annul it.

Recommendation 25 – online access to up-to-date legislation
Access to legislation is vital. We recommend that the official Government legislation website be brought up to date with the full list of all Ordinances and all delegated legislation in force. This information should be kept up to date so that each time a new piece of legislation is made it is added to this website.

Recommendation 26 – clearer ownership of Bills
Every Bill, other than a Private Member's Bill, needs to be "owned" by a named Minister. The ministerial owner of the Bill always needs to be clear. The name of the member who introduces a Bill should be included on the face of the Bill.

Recommendation 27 – legislative programme agreed and published
After the next election, the Cabinet should prioritise determining a legislative programme, preferably for the full term but, if not, then for the first 12 months.

Recommendation 28– prioritisation of Bills
Cabinet needs to agree on the prioritisation of Bills.

Recommendation 29 – greater drafting resources
We recommend that, if resources permit, the current staffing of one on-Island and one remote drafter be augmented by a second on-Island drafter.

Recommendation 30 – greater use of Application Orders
This first power (to pass an Application Order to make an Act of Parliament apply in St Helena) is useful and should be used more often.

Recommendation 31 – revision of Ministerial Code, redrafting of LegCo Code, review and redrafting of Public Service Codes
When opportunity permits, aspects of the drafting of the Ministerial Code might be tidied up. Well before that, the Code of Conduct for the Legislative Council should be completely redrafted with the aim of securing brevity and clarity. This should be done by the new LegCo. The Public Service Code of Conduct needs to be updated. It is important that Codes of Conduct are regularly reviewed, particularly as they relate to conflicts of interest, to ensure relevance to the law and contemporary standards, and expectations.

Recommendation 32 – further training on conflicts of interest
Capacity development of Councillors following the 2025 elections, as part of embedding the Ministerial system, should include a module on identifying, disclosing and addressing conflicts of interest, under the LegCo Code of Conduct. Capacity development of Ministers following their appointment after the 2025 elections should include a module on identifying, disclosing and addressing conflicts of interest, under the Ministerial Code of Conduct. All public servants should undertake training on identifying, disclosing and addressing conflicts of interest, under the Code of Conduct.

Recommendation 33 – provision (but not content) of legal services is subject to direction
The content of legal advice must always be independent and not subject to direction or control. This is a difficult balance to strike; the AG is an officer of the Public Service under the Constitution and ought to assist in the delivery of the Executive's priorities, but at the same time the AG must be free to give legal advice, even if this is not wanted. It would be helpful if this nuance was reflected in the Constitution.

Recommendation 34 – Chief Minister to have role in appointment of AG
The Chief Minister should have a role to play in this appointment. This should be a consultative role, rather than a decision-making role.

Recommendation 35 – constitutional statement of function of the Public Service
We recommend that the Constitution be expanded to clarify the role of the Public Service. The Constitution should state that:

- the Public Service are to serve the executive authority by offering advice to, implementing decisions of, and carrying out other activities assigned to it by the executive authority.
- their independence and impartiality are to be respected.
- the head of the Public Service is the Chief Secretary.

Recommendation 36 – consultative role for Ministers in senior appointments within the Public Service

The Financial Secretary is appointed by the Governor "acting after consultation with the Chief Minister". We recommend that this procedure be extended to all appointments to senior levels in the Public Service (PDs and Chief Secretary).

Recommendation 37 - Central Support Service as a portfolio, or integrated into portfolios
We recommend formalising Central Support as a Portfolio (possibly renamed Chief Minister's Portfolio) with the Deputy Chief Secretary as the Portfolio Director. This would make ministerial responsibility for it much clearer.
The current functions of the Central Support Service should be reviewed to determine whether all or some fit with a new Portfolio, with other functions being transferred to other Directorates.

Recommendation 38 – use of Service Level Agreements
Service Level Agreements should be established between Ministers and PDs. This should be done near the start of the Ministers' term of office, and SLAs should be regularly reviewed.

Recommendation 39 – effectiveness of TC programme
The Chief Secretary should provide an annual report to the Governor and Chief Minister, to be tabled in LegCo, on the effectiveness of the TC programme, and the extent to which it is contributing to local empowerment and succession, and the development and implementation of SHG visions and strategies.
The Chief Secretary, in conjunction with the Governor's office, and counterparts at FCDO, should regularly review the processes for advertising, interviewing, engaging, and deploying TCs to St Helena, including terms of office (duration and terms of appointment).
The Chief Minister and Ministers should be consulted on the need for each TC appointment, the job description and reporting frameworks.

Recommendation 40 – appointment of Complaints Commissioner
We recommend that the Governor should appoint a Complaints Commissioner and that LegCo should enact an Ordinance setting out the functions of that office.

Recommendation 41 – formalised route for EHRC to be consulted on legislation
Protocols should be agreed between the Commission, the Chief Minister and Ministers, the Chief Secretary, and PDs to ensure that the EHRC has a formal consultative role when legislation is under consideration.

Recommendation 42 – greater individual responsibility
Ministers and other decision-makers need to be more willing to take personal responsibility for decisions. In line with our recommendations on delegation, not all decisions need to be escalated. Ministers need to be more assertive in their ownership of portfolio matters, whether legislative, financial or public policy, and with that goes direct accountability for outcomes.

Recommendation 43 – use of Strategic Outcome Framework
SOF provides for a systematic way to plan and to make decisions, and this is very much to be welcomed. It has already been accepted within the Government and there is little point in creating a new alternative system. As such, we endorse its use.

Recommendation 44 – consideration of what can be delegated
The Governor, Chief Minister, Ministers, Chief Secretary, and PDs should consider and recommend how delegated authority might be applied more broadly, having regard for competency and other factors.

Recommendation 45 – record keeping of delegations
Significant decisions, determined by the PD, made under delegated authority should be published monthly (or some other interval as determined by the original authority holder), at the Directorate website.
Recommendation 46 – legislative transfer of executive functions from Governor to Ministers
It is necessary to make separate amendments to individual statutes delegating specific powers from Governor to Minister or Ministers.

Recommendation 47 – petitions
Standing Orders of LegCo should be revised to permit petitions to be lodged by citizens and referred to the relevant LegCo Committee. They should not need an Elected Member as sponsor.

Recommendation 48 – make the rule of law justiciable, remove ouster clauses
Under s. 4(2) of the Constitution, the rule of law is non-justiciable, meaning that it cannot be adjudicated upon by a court. This ought to be corrected, and the ouster clauses in s. 26(4), 43(10) and 118(4) should be removed.

Recommendation 49 – enhanced human right procedures
In the UK, the Human Rights Act 1998 contains a provision that all legislation must be interpreted, so far as is possible, to be compatible with human rights. We recommend similar provision for St Helena.
As the 2009 Constitution Order is of higher authority than Ordinances, we recommend it be amended to give the courts the express power to strike out Ordinances that breach human rights.

Nature of change required
The following recommendations require constitutional (and other) change:
Recommendations:1, 4, 13, 14, 24, 33, 34, 35, 36, 48, 49

The following recommendations require legislative change or change to Standing Orders:
Recommendations: 15, 16, 19, 20, 40, 44, 46, 47

The following recommendations require administrative or cultural change:
Recommendations: 2, 3, 5, 6, 7, 8 ,9, 10, 11, 12 17, 18, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, 37, 38, 39, 41, 42, 43, 45

Annex 3 - Glossary

- AG – Attorney General
- Cabinet – the Chief Minister and other Ministers
- Constitution – the Constitution set out in the St Helena, Ascension and Tristan da Cunha Constitution Order 2009
- Councillor – an Elected Member of LegCo who is not a Minister
- CS – Chief Secretary
- ExCo – Executive Council
- FS - Financial Secretary

- LegCo – Legislative Council
- PD – Portfolio Director
- SAMS – South Atlantic Media Services
- SLA – Service Level Agreement
- St Helenian – we use this in a non-technical way to describe Saints and all residents on St Helena
- SOF – Strategic Outlook Framework
- The Team – the St Helena Governance Review Team, detailed in Annex 1.
- TC – technical co-operation, a person brought to the Island to carry out a role in the Public Service

Annex 4 - List of engagements

Most meetings and interviews were face to face during the visits of the team to the island in December 2024 and April 2025. A small number were conducted via email or by video-link. Off-island interviewees were consulted on best practices in other jurisdictions.

Mission 1 - meetings and consultations

Date	Person	Position
November 25	Hon Julie Thomas Hon Christine Scipio	Chief Minister Minister for Environment, Natural Resources and Planning
December 1 2024	Hon Martin Henry	Minister for Health and Social Care
December 2 2024	HE Nigel Phillips CBE RAF	Governor of St Helena
	Ms Tasha Harris	Head of the Governor's Office
	Hon Cyril (Ferdie) Gunnell	Speaker of LegCo
	Ms Marie Horton	Portfolio Director Education
December 3 2024	Hon Robert Midwinter	Councillor
	Ms Catherine Turner Mr Andy Pearce Ms Kelly McDermot	CEO Equality and Human Rights Commission Chair of Commission Commissioner
	Hon Gillian (Gilly) Brooks	Councillor
	Mr Daniel Weight	Crown Counsel (Commercial)
December 4 2024	Mr Alex Mitcham	PD – Safety, Security and Home Affairs
	Hon Dr Corinda Essex	Councillor
	Hon Jeffery Ellick	Minister for Safety, Security and Home Affairs
	Hon Cathy Cranfield	Deputy Speaker LegCo
	David Jeremiah Joy Jeremiah	Former Attorney General Former senior nurse
December 5 2024		LegCo meeting
	Mr Duncan Cooke Ms Yvonne Williams	Chief Magistrate Judicial services manager
December 6		Informal LegCo

2024		
	Ms Susan O'Bey	Chief Secretary
		LegCo meeting
	Dr Cilla McDaniel	Member of public
	Ms Jennifer O'Hea	Legislative drafter in AG chambers
	Ms Cilla Isaac	PA to Law officers
	Ms Sara McIlroy	Senior Crown Counsel – Civil
	Mr Aldhelm Garner	Crown Counsel
	Bishop Dale Bowers	Bishop
	Taxi driver	To and from Bishop's residence
December 9 2024	Public Accounts Committee	LegCo Committee
	Hon Ronald Coleman	Councillor
	HE Nigel Phillips Ms Tasha Harris	Governor Head of Governor's Office
	Mr Mark Yon Mr Bramwell Lumukwana	Chairman Public Accounts Committee Vice Chairman Public Accounts Committee
	Hon Christine Scipio	Minister for Environment, Natural Resources and Planning
	Ms Gwyneth Howell	Airport Manager
December 10 2024	Radio interview	SAMS
	Hon Elisabeth (Betty) Knipe	Councillor
	Ms Helen Bennett	CEO National Trust
	Ms Ann Dillon	Head of SHG Comms
	Ms Donna Crowie	SAMS
	Ms Hazel Willmott	Owner Consulate Hotel
	Ms Mia Henry	CEO Maritime Service
	Hon Andrew Turner	Councillor
	Ms Anita Legg	Clerk of Councils
	Mr Vince Thompson	Editor Independent Newspaper
	Mr Liam Yon	Editor at South Atlantic Media Services
	Mr Paddy Butler	Department of Justice (Northern Ireland) Legal Adviser
December 11 2024	Mr Damian Burns	PD Economic Development
	Mr Dax Richards	Financial Secretary
	Ms Pamela Ward Pearce	Member of public and former Councillor
	Hon Karl Thrower	Councillor
	Mr Darren Duncan	PD of Environment and Natural Resources
	Hon Mark Brooks	Minister for Treasury and Economic

		Development
	11 members of the public	Public meeting
	Craig Williams	Taxi driver
	Public Accounts Committee	LegCo Committee
	Mr David Price	Chief of Police
	Ms Crystal Maggot	Portfolio Assistant for Central Support
	Hon Julie Thomas	Chief Minister
	Anthony (Tony) Green	Member of public
	HE the Governor's reception	
	Ms Ann Muir	Head of Strategic Policy
	Ms Janet Lawrence	CEO - Connect
	HE Nigel Phillips Ms Tasha Harris	Governor Head of Governor's Office
	Mr Walter (Scotty) Scott	Public Solicitor
	Ms Leanne Henry Ms Kim Francis	Assistant Managing Director IT manager of bank
	Mr David Ballantyne	Recently retired Attorney General
December 17 2024	Mr Phil Sharman	Represents St Helena Government as Non-Executive Director on the boards for 4 state owned companies
	Mr Alex Thomas	Programme Director, Institute for Government (UK)
December 20 2024	Officials	National Audit Office
January 6 2025	Mr David Jeremiah	Former Attorney General
January 6 2025	Mr Alexander Gordon	First Legislative Counsel in Northern Ireland
March 10 2025	Dame Brenda King	Attorney General for Northern Ireland

Mission 2 - meetings and consultations

Date	**Person**	**Position**
March 31 2025	HE Nigel Phillips Ms Tasha Harris	Governor Head of Governor's Office
	Mr Daniel Weight	Crown Counsel (Commercial) Attorney General's Department
	Hon Karl Thrower Hon Elisabeth (Betty) Knipe Hon Dr Corinda Essex Hon Robert Midwinter Hon Gillian (Gilly) Brooks	Councillor Councillor Councillor Councillor Apology
April 1, 2025	Hon Julie Thomas Hon Christine Scipio	Chief Minister Minister for Environment, Natural Resources and

	Hon Mark Brooks Hon Martin Henry Hon Jeffery Ellick	Planning Minister for Treasury and Economic Development Minister for Health and Social Care Minister for Safety, Security and Home Affairs
April 2 2025	Ms Anita Legg	Clerk of Council
	Hon Cyril (Ferdie) Gunnell Hon Cathy Cranfield	Speaker of LegCo Deputy Speaker LegCo
	Governor's reception	Governor, Head of Governor's office, Chief Minister, 4 Cabinet Ministers, several Crs, Speaker, Deputy Speaker, Chief Secretary, Financial Secretary.
April 3 2025		Attended Public Accounts Committee
	Ms Jennifer O'Hea Ms Sara McIlroy Mr Aldhelm Garner Mr Daniel Weight Mr Simon Dykes	AG Chambers
April 4 2025	Ms Susan O'Bey Ms Ann Muir Ms Ann Dillon Mr Dax Richards Ms Marie Horton Mr Damian Burns Ms Carol Henry Mr Darren Duncan Nicolas Yon Tracy Poole-Nandy Carolyn Nutkins Jeremy Roberts	Chief Secretary Head of Strategic Policy Head of SHG Comms Financial Secretary PD Education PD Economic Development Deputy Chief Secretary PD Environment and Natural Resources Deputy Financial Secretary PD Health Head of Human Resources Head of ICT Acting Police Chief
	Hon Julie Thomas Hon Christine Scipio Hon Mark Brooks Hon Martin Henry Hon Jeffery Ellick	Chief Minister Minister for Environment, Natural Resources and Planning Minister for Treasury and Economic Development Minister for Health and Social Care Minister for Safety, Security and Home Affairs
April 7 2025	Ms Catherine Turner Mr Andy Pearce	CEO Equality and Human Rights Commission Chair of Equality and Human Rights Commission
	Mr Vince Thompson	Editor The St Helena Independent
	Mr Dax Richards	Financial Secretary
April 8 2025	Mr Johan Beizuidenhout	Manager fish factory
	Mr Basil and Mrs Barbara George	Members of the public (and former Councillor in the case of Mr George)
April 9 2025	Hon Ronald Coleman	Councillor

	Bishop Dale Bowers	Bishop of St Helena
	Ms Pamela Ward Pearce	Member of the public and former Councillor
	Neil & Debbie Fantom	Members of the public
April 10 2025	Mr Andrew Dawson	Acting Attorney General
	Mr Tony Green	Member of the public and former Councillor
	Ms Carol Henry	Head of Administrative Support Services, Central Support Services
	Ms Anita Legg	Clerk of Councils
	Mr Damian Burns	Portfolio Director, Economic Development
April 11 2025	SAMS	Radio interview
	Ms Mia Henry	Head of Maritime Safety, Security & Home Affairs
	Ms Tasha Harris	Head of Governor's Office, but at time Acting Governor
	Hon Cyril (Ferdie) Gunnell Hon Cathy Cranfield	Speaker of LegCo Deputy Speaker LegCo
April 24 2025	Alasdair Bain	Cabinet Secretary, Government of Montserrat

Annex 5 – The Laurence Smyth Report Recommendations (2024)

Liam Laurence Smyth, *St Helena Legislative Council: Review by House of Commons Senior Clerk* (October 2024)

Recommendation 1:
The Financial Secretary, in consultation with the Deputy Chief Secretary, should provide a distinct and separate budget line in the Expenditure by Output table in the 2025/26 Budget.

Recommendation 2:
The Deputy Chief Secretary should set out in a letter of delegation to the Clerk of the Legislative Council, as agreed with the Financial Secretary, details of the Legislative Council's distinct and separate budget in terms of the amount and purposes of expenditure for 2025/26 and subsequent years, together with the normal financial reporting and control procedures comparable to other parts of the St Helena public service.

Recommendation 3:
The Deputy Chief Secretary and Financial Secretary should be invited to an informal Legislative Council meeting to brief the Council on the budget allocation for the Legislative Council in 2025/26, and similarly for subsequent years.

Recommendation 4:
Before the annual budget for the Legislative Council in 2026/27 is finalised, there should be discussions within an informal non-statutory Parliamentary Services Consultative Committee, chaired by the Speaker or Deputy Speaker, whose membership should include the Chief Minister, the Deputy Chief Secretary, all three Committee Chairs and the Clerk of the Legislative Council.

Recommendation 5:
The secretariat of the Legislative Council should draw up an activity report on the work of the Legislative Council in 2024/25, to be published as a Sessional Paper in good time before the informal discussion of the budget for 2026/27.

Recommendation 6:
The Committee of Public Accounts could helpfully review the audited accounts of the Legislative Council, once they form a distinct heading in the budget, and possibly invite the Chief Auditor to suggest ways in which output reporting could be improved.

Recommendation 7:
Work should begin early in the new term after the 2025 general election to map the full costs of the Legislative Council, including drawing up or revising service legal agreements for everything provided at present on a non-cash basis by SHG Central Support Services to the Legislative Council.

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